Official Gazette

REPUBLIC OF THE PHILIPPINES

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Mrs. Roxas on the afternoon of December 23 was hostess to about 3,000 indigent children at a Christmas party on the grounds of Malacañan. A number of prominent ladies assisted her in entertaining the guests.

MRS. Rosario Acuña Picazo, mother of President Roxas, and Mrs. Mercedes Madamba Llanes, mother of the late Mrs. Josefa Llanes Escoda who gave up her life in the service of her country as a leader of the underground movement during the enemy occupation, were chosen "Outstanding Mothers of 1946" by the National Federation of Women's Clubs. At appropriate ceremonics held in the Session Hall of Congress on the afternoon of December 2, which had been designated Parents' Day by presidential proclamation, they were awarded diplomas of merit and medals. The principal address at the ceremonies, which were attended by President and Mrs. Roxas, was delivered by Vice President Quirino, while Mrs. Aurora Aragon Quezon made the awards.

The Vice President in his speech paid high tribute to Filipino mothers in general and to the honorees and Mrs. Escoda in particular. "The Filipina today," he said, "can well boast of a position that few of her sisters of other lands enjoy, and it is most fitting that we should honor her in observing a day set apart for the Filipino family. * * * It is the Filipino mother who has nourished the true traditions of our family; it is also she who has taken the boldest steps to strengthen and modernize it."

(*See complete text of the Vice President's speech under "Historical Papers and Documents" in this issue.*)

A special Parent's Day program was held in the University of the Philippines on the afternoon of December 5 to honor Mrs. Trinidad de Leon Roxas, wife of the President, who was chosen "Mother of the Year" by the U. P. Women's Club.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 32

EXTENDING FURTHER THE PERIODS PROVIDED FOR IN SECTIONS 3, 5, AND 6 OF REPUBLIC ACT NO. 17, ENTITLED "AN ACT TO PROVIDE FOR THE CIRCULATION OF TREASURY CERTIFICATES WITH THE OFFICIAL SEAL OF THE REPUBLIC OF THE PHILIPPINES STAMPED, PRINTED OR SUPERIMPOSED THEREON, AND FOR OTHER PURPOSES."

WHEREAS, section 6 of Republic Act No. 17, approved September 25, 1946, provides that Treasury certificates not marked as therein provided shall, after November 30, 1946, not be legal tender for the purposes of section 1612 of the Revised Administrative Code;

WHEREAS, due to lack of time and adequate facilities which rendered it materially impossible to comply with the requirements of Republic Act No. 17 the periods provided for in sections 3, 5, and 6 thereof was extended for a period of one month under Executive Order No. 30, dated November 26, 1946;

WHEREAS, it is necessary in the public interest to extend further the periods provided for in sections 3, 5, and 6 of said Act;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by section 7 of Republic Act No. 17, do hereby further extend for a period of one month the periods provided for in sections 3, 5, and 6 of Republic Act No. 17.

Done at the City of Manila, this 23rd day of December, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 33

PROMULGATING RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF REPUBLIC ACT NUMBERED THIRTY ENTITLED "AN ACT AUTHORIZING THE PAYMENT, UNDER CERTAIN CONDITIONS, OF A GRATUITY TO THE WIDOW AND/OR CHILDREN, AND IN THEIR ABSENCE TO THE OTHER HEIRS, OF A DECEASED OFFICER OR MEMBER OF ANY POLICE FORCE OR SIMILAR GOVERNMENTAL ORGANIZATION ENGAGED IN THE MAINTENANCE OF PEACE AND ORDER, APPROPRIATING FUNDS THEREFOR."

Pursuant to the provisions of section 2 of Republic Act No. 30, I, Manuel Roxas, President of the Philippines, do hereby promulgate the following rules and regulations to carry out the provisions of the aforesaid Act:

1. Claims under the aforesaid Act shall be paid only after a Committee composed of the Secretary of the Interior as chairman and the Undersecretary of Justice and the Provost Marshal General as members has determined that they come within or that they fully satisfy the requirements of Republic Act No. 30.

2. For the purpose of said determination, the papers of each case shall include, among other pertinent supporting information and documents, the following:

(*a*) Evidence of employment, such as certified true copies of last appointment or commission, and transcript of service record.

(*b*) The circumstances, in full, showing that the deceased was engaged in the performance of his duties in connection with the campaign for the maintenance of peace and order and that he met death in said campaign or that his death was a direct consequence of his participation therein.

(*c*) Satisfactory evidence of death and of its cause, such as death certificate and certificate of the physician who attended the deceased during his last illness or autopsy report if cause of death cannot be determined by ordinary means.

3. Until provision is made otherwise, the benefits afforded in Republic Act No. 30 shall accrue only in cases of death occurring on or after January 1, 1946: *Provided*, That such sums out of the appropriation provided in said Act remaining unexpended at the close of the present fiscal

year may be paid as benefits to cases of death occurring after June 30, 1947, if the cause thereof be participation in a campaign conducted before July 1, 1947.

4. The Auditor General, with the concurrence of the Secretary of the Interior, shall issue the necessary instructions for the proper and expeditious identification of the beneficiary or beneficiaries as authorized by Republic Act No. 30. Said instructions should tend to eliminate unnecessary requirements and delay so that the beneficiary or beneficiaries, once identified, may promptly receive the amount or amounts due to them under said Act. Whenever there will be no confusion, actual payment of the gratuity should be made to only one of the rightful claimants who may have been duly authorized by the others to receive the amount for all of them.

5. All officers and employees, be they National or of the local governments, who participate in the perfection of the claim or in the preparation of the necessary papers to support the claim, are directed to assist in every possible way, any applicant for gratuity under said Act.

6. All claims for gratuity shall be given preferential attention and to expedite the movement from office to office of the claim papers, each of said papers should be prepared originally with sufficient number of copies.

7. The offices or bureaus concerned shall not deal with intermediaries or persons who represent themselves as acting in behalf of claimants.

8. No warrant covering the payment of gratuities shall be delivered to any person other than the payee. In case a payee cannot personally take delivery of such warrant, it should be mailed without delay.

9. Documents and other papers relating to claims for gratuities shall be considered confidential.

Done at the City of Manila, this 27th day of December, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 34

DESIGNATING THE BARRIO OF BAROY IN THE MUNICIPALITY OF TUBOD, PROVINCE OF LANAO, AS THE SEAT OF THE MUNICIPAL GOVERNMENT THEREOF.

Upon the recommendation of the Secretary of the Interior, and pursuant to the provisions of section 68 of the Revised Administrative Code, the barrio of Baroy in the municipality of Tubod, Province of Lanao, as created by Republic Act No. 58, is hereby designated as the seat of government of the said municipality.

This Order shall take effect immediately.

Done at the City of Manila, this 27th day of December, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 16

PUBLISHING THE VALUES OF CERTAIN FOREIGN CURRENCIES FOR THE PURPOSE OF THE ASSESSMENT AND COLLECTION OF DUTY.

Pursuant to the authority vested in me by Republic Act Numbered Seventy-seven and upon recommendation of the Undersecretary of Finance, the values of certain foreign currencies are hereby published, for the purposes of said Republic Act Numbered Seventy-seven, as follows:

Country	Unit	Value in Philippine currency	Equivalent in U. S. currency
Bolivia	Boliviano	₱0.05	$0.025
Chile	Gold Peso	.0674	.0337
China	National	.00062	.00031
Cuba	Dollar (peso)	2.00	1.00
Hongkong	Dollar	.515	.2575

Country	Unit	Value in Philippine currency	Equivalent in U. S. currency
Indo-China	Piaster	.286	.143
Java	Guilder	.76	.38
Peru	Sol	.31	.155
Shanghai	Dollar	.00062	.00031
Siam	Gold-Silver: Tical	.2042	.1021
Straits Settlements	Silver Dollar	.9550	.4775
Venezuela	Bolivar	.603	.3015

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 5th day of December, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 17

DECLARING TUESDAY, DECEMBER 31, 1946, A SPECIAL BANK HOLIDAY

WHEREAS, a petition has been received from the Associated Banks of Manila requesting that the thirty-first day of December, nineteen hundred and forty-six be declared a bank holiday so as to enable the banks to continue without interruption the heavy work incident to the closing of their accounts at the end of the year;

WHEREAS, the thirtieth day of December, nineteen hundred and forty-six, and the first day of January, nineteen hundred and forty-seven, are public holidays, the thirty-first day of December, nineteen hundred and forty-six, can be declared a special bank holiday to the great advantage of the banks and no disadvantage will result to the public in general;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the authority vested in me by section 30 of the Revised Administrative Code, do hereby proclaim Tuesday, December thirty-first, nineteen hundred and forty-six, as a special bank holiday.

Done at the City of Manila, this 26th day of December, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

[SEAL] MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 20

CREATING A COMMISSION TO STUDY AND MAKE RECOMMENDATIONS ON THE WAYS AND MEANS TO INCREASE THE PRODUCTION OF PALAY, CORN AND OTHER FOOD CROPS.

WHEREAS, this country is not self-sufficient in rice, corn and other food crops, thereby necessitating heavy annual importation of these foodstuffs from abroad;

WHEREAS, in the Philippines there are vast tracts of fertile lands, both private and public, still undeveloped and untouched, capable of producing all of our requirements in the above food crops;

WHEREAS, the development and settlement of these lands would provide productive employment for the surplus population in the congested farm areas;

WHEREAS, the present system of cultivation for the production of rice and corn is antiquated and wasteful, calling for the introduction of better scientific methods and the utilization of modern farm machinery and equipment;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby create and constitute a Rice and Corn Production Commission which shall be composed of the following:

Felipe Buencamino, Jr.	Chairman
Jose Camus	Member
Eduardo Cojuangco	Member
Hilarion Henares	Member
Vicente Tordesillas	Member
Amando Dalisay	Member
Jose Gaston	Member
Senen Gabaldon	Member
Luis Lichauco	Member

It shall be the duty of this Commission to recommend areas of public and private lands suitable for immediate

development; to submit plans to bring these areas into immediate cultivation for the production of rice, corn and other food crops; and to recommend means and methods for the speedy mechanization of Philippine rice and corn culture.

Each member of the Commission who is not in the government service shall receive a per diem to be fixed by the President.

The Commission shall submit to the President of the Philippines its report and recommendations not later than December 15, 1946.

The Commission is hereby empowered and authorized to call upon any Department, bureau, agency or instrumentality of the Government for such information as it may require in the performance of its functions, and for the purpose of securing such information, it shall have access to and shall have the right to examine any books, documents, papers, or records of such Departments, bureaus, offices, agencies and instrumentalities of the Government.

Done at the City of Manila, this 3rd day of December, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 21

CREATING A DIVISION OF CONTROLS IN THE EXECUTIVE OFFICE

I, Manuel Roxas, President of the Philippines, do hereby create a Division of Controls in the Executive Office to effectuate the general policies which the President may lay down from time to time with respect to the sale, lease, transfer, distribution or disposition of machinery, equipment, merchandise, food, clothing and other articles or commodities by the National Trading Corporation, the Philippine Relief and Rehabilitation Administration, the Agricultural Machinery and Equipment Corporation, and the Surplus Property Commission. The Division herein created shall pass upon all transactions of said corporations

which under the laws or executive orders governing the operation thereof require the approval of the President for their completion or consummation.

The President shall designate the person to take charge of the Division of Controls with the assistance of such officers and employees as may be assigned to it from time to time by the Chief of the Executive Office.

Done at the City of Manila, this 5th day of December, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 22

DESIGNATING THE NATIONAL RIZAL DAY COMMITTEE

WHEREAS, the mid-centennial anniversary of Jose Rizal's martyrdom on December thirtieth, nineteen hundred and forty-six, falls in the first year of the Republic of the Philippines; and

WHEREAS, the proclamation of the Republic this year constitutes the glorious fulfillment of the dream for which our greatest national hero freely gave his life in sacrifice;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, do hereby call upon all officials and citizens of the Republic to observe the mid-centennial anniversary of his sacrifice with the most appropriate ceremonies and programs expressive of the nation's highest homage and gratitude; and designate the national Rizal Day Committee, with Emilio Abello, as chairman, and Marciano Roque, Sergio Bayan, Prudencio Langcauon, Rafael Jalandoni, Valeriano Fugoso, Manuel de la Fuente, Alfredo de Leon, Antonio Paguia, Francisca T. Benitez and Toribio Teodoro, as members, and Vicente Lontok as Executive Secretary, to organize and effect all arrangements necessary for the fitting celebration of the day all over the Philippines and secure the coöperation of all government and private instrumentalities to ensure its success.

Done at the City of Manila, this 5th day of December, in the year of Our Lord, nineteen hundred and forty-six, and of the Republic of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 23

SUSPENDING PROVINCIAL FISCAL MARIANO V. BENEDICTO OF ZAMBOANGA

Informations for murder having been filed by the Provincial Fiscal of Iloilo with the Tenth Guerrilla Amnesty Commission against Mr. Mariano V. Benedicto, Provincial Fiscal of Zamboanga, for the deaths of Amando Perlas and Jesus F. Diez, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law and in the interest of the public service, do hereby order the suspension from office of Provincial Fiscal Mariano V. Benedicto of Zamboanga pending the final determination of said cases.

Done at the City of Manila, this 21st day of December, in the year of Our Lord, nineteen hundred and forty-six and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

RESOLUTION OF CONGRESS

FIRST CONGRESS OF THE PHILIPPINES

First Session

Begun and held at the City of Manila on Saturday, the twenty-fifth day of May, nineteen hundred and forty-six

[RESOLUTION OF BOTH HOUSES]*

RESOLUTION OF BOTH HOUSES PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE PHILIPPINES TO BE APPENDED AS AN ORDINANCE THERETO.

Resolved by the Senate and House of Representatives of the Philippines in joint session assembled, by a vote of not less than three-fourths of all the Members of each House voting separately, To propose, as they do hereby propose, the following amendment to the Constitution of the Philippines to be appended as an Ordinance thereto:

"ORDINANCE APPENDED TO THE CONSTITUTION

"Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines."

This amendment shall be valid as a part of the Constitution when approved by a majority of the votes cast in an election at which it is submitted to the people for their ratification pursuant to Article XV of the Constitution.

Adopted, September 18, 1946.

* To be published in English and Spanish in three (3) consecutive issues of the OFFICIAL GAZETTE as required by section 2 of Republic Act No. 73 submitting to the Filipino people, for approval or disapproval, the proposed amendment to the Constitution. (Third and last publication.)

PRIMER CONGRESO DE LA REPÚBLICA DE FILIPINAS

Primer Período Ordinario de Sesiones

Empezado y celebrado en la Ciudad de Manila el sábado, veinticinco de mayo de mil novecientos cuarenta y seis

[RESOLUCIÓN DE AMBAS CÁMARAS]*

RESOLUCIÓN DE AMBAS CÁMARAS PROPONIENDO UNA ENMIENDA A LA CONSTITUCIÓN DE FILIPINAS QUE SERÁ ADSCRITA COMO UNA ORDENANZA DE LA MISMA.

El Senado y la Cámara de Representantes de Filipinas constituídos en sesión conjunta, mediante el voto de no menos de las tres cuartas partes de todos los Miembros de cada Cámara en votación separada resuelven, Proponer, como por la presente proponen, la siguiente enmienda a la Constitución de Filipinas que será adscrita como una Ordenanza de la misma:

"ORDENANZA ADSCRITA A LA CONSTITUCIÓN

"No obstante las disposiciones del artículo primero, Título Trece y del artículo octavo, Título Catorce de la precedente Constitución, durante la efectividad del Convenio Ejecutivo celebrado por el Presidente de Filipinas con el Presidente de los Estados Unidos el cuatro de julio de mil novecientos cuarenta y seis, con arreglo a las disposiciones de la Ley Número Setecientos treinta y tres del Commonwealth, pero que en ningún caso se prorrogará más allá del tres de julio de mil novecientos setenta y cuatro, la disposición, explotación, desarrollo y aprovechamiento de todos los terrenos agrícolas, madereros y mineros del dominio público. las aguas, los minerales, el carbón, el petróleo y otros aceites minerales, todas las fuerzas y fuentes de energía potencial y demás recursos naturales de Filipinas y la explotación de utilidades públicas, si fueren asequibles para cualquiera persona, lo serán para los ciudadanos de los Estados Unidos y para todas las formas de empresas comerciales de la propiedad o bajo el control directo o indirecto de los ciudadanos de los Estados Unidos de la misma manera y en las mismas condiciones impuestas a los ciudadanos de Filipinas o a las corporaciones o sociedades que sean de la propiedad o estén bajo el control de los ciudadanos de Filipinas."

Esta enmienda será válida como parte de la Constitución cuando sea aprobada por una mayoría de los votos emitidos en una elección en la que será sometida al pueblo para su ratificación de acuerdo con el Título XV de la Constitución.

Adoptada, Septiembre 18, 1946.

* Se publicará en ingles y en español en tres (3) números consecutivos de la GACETA OFICIAL de acuerdo con el artículo 2 de la Ley de la República No. 73 que somete al pueblo filipino, para su aprobación o desaprobación, la propuesta enmienda a la Constitution. Tercera y última publicación.)

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

PROVINCIAL CIRCULAR (UNNUMBERED)

December 6, 1946

REQUEST FOR SUBMITTAL OF RECORDS OF FILIPINO-OWNED PROPERTIES IN JAPAN

To all Provincial Governors and City Mayors:

For the information of all concerned, there are quoted hereunder the contents of the letter of the Honorable, the Chief of the Executive Office, to this Office dated December 3, 1946, as follows:

"Your attention is invited to the following letter from Mr. George Atcheson, Jr., United States Political Adviser for Japan, received in this Office through diplomatic channels, with the request that its contents be circularized to the people through the different agencies and instrumentalities of that Department:

'The Civil Property Custodian of General Headquarters, Supreme Commander for the Allied Powers, is engaged in a project of establishing records as of December 7, 1941 on all foreign-owned property in Japan. Such records are to be used for the completion of files in the Office of the Civil Property in Japan and in checking claims relating to loss and for restitution of specific property in Japan.

'It is possible that prior to the war various nationals of the Philippine Republic may have had an interest in property in Japan. In order to assist the Civil Property Custodian, it is requested that the Philippine Government be asked to make available through the Embassy for transmittal to General Headquarters, Supreme Commander for the Allied Powers, a record of all property owned by nationals of the Philippine Republic as of December 7, 1941. In this connection this Mission has been unable to discover any previously submitted records of property owned by nationals of the Philippines among the archives of the former American Embassy at Tokyo.'

"I shall be glad from time to time to receive such reports for transmittal to the Embassy of the United States of America."

The local officials concerned are requested to give due publicity to this circular and to receive the corresponding reports and communications relative hereto for transmittal through this Office to the Office of the President.

JOSE C. ZULUETA
Secretary of the Interior

PROVINCIAL CIRCULAR (UNNUMBERED)

December 18, 1946

INFORMATION BULLETIN NO. 1 OF THE UNITED STATES PHILIPPINE WAR DAMAGE COMMISSION

To all Provincial Governors and City Mayors:

There is quoted hereunder, for the information of all concerned, Information Bulletin No. 1 of the United States Philippine War Damage Commission, with the request that it be given the widest publicity possible to enable the people to file properly and punctually their claims for war damages:

"December 11, 1946

"UNITED STATES PHILIPPINE WAR DAMAGE COMMISSION, MANILA, PHILIPPINES

Information Bulletin No. 1

"This is the first in a series of information bulletins, prepared by the United States Philippine War Damage Commission and distributed through the cooperation of the office of the Secretary of the Interior. The purpose of this series is to disseminate as widely as possible authentic information concerning the operations of the Philippine War Damage Commission.

"At the outset, it must be emphasized that the Commission is not yet ready to receive claims.

"The official Claim Forms have not yet been received from the United States, owing to the shipping strike there. When they are received, the Commission must distribute them to focal points throughout the Philippines, so as to provide easy access to Claim Forms for all persons having claims to file with the Commission.

"After this distribution task is completed, the Commission will announce an initial date for the receipt of completed Claim Forms. This date will not be announced until the distribution of Claim Forms to focal points has been accomplished.

"There is no charge for either the Claim Forms, or for the Circular of General Information containing instructions for filing claims which accompanies it. The Commission issued a warning against any

unscrupulous persons who might try to charge claimants for Claim Forms or for the information circulars. There is *no charge* for filing a claim, other than the usual legal fee to have the completed forms sworn to by an official authorized to administer oaths.

"Any person who attempts to charge any fees or accept any gratuity for furnishing Claim Forms or information circulars to prospective claimants is operating outside the law.

"The Commission made it clear that no proper claims for private losses have yet been received or will be received for the time being. Purported claims which have been mailed to the Commission in Manila, or brought in to its offices cannot be considered. All claimants must file on the official Claim Forms in order to receive consideration. This means that those who have already sent in some sort of claim will have to file over again on the official Claim Forms, when they are received and distributed, and after the first filing date has been announced.

"The Commission defined the eligibility of claimants. In order to receive consideration, claimants must have been citizens of the Philippines or of the United States on December 7, 1941, and continuously since that time, and the claimant must have had an insurable interest in the property for which the claim is made from December 7, 1941 up to and including the time of loss or damage. Noncitizens can only qualify to receive consideration if they are citizens of a friendly nation, which, in addition, grants reciprocal consideration for war damages to United States citizens resident in that country, and provided they were resident in the Philippines for five years prior to December 7, 1941.

"Under no circumstances can enemy aliens, or persons found guilty of collaboration with the enemy, or disloyalty, receive payment of a claim before the Philippine War Damage Commission.

"Corporations, organizations and unincorporated associations may qualify to receive consideration providing they are not controlled and were not controlled by enemy aliens, and providing they are organized under the laws of the Philippines, the United States, or one of the several States and territories of the United States. Churches and other religious organizations also may qualify.

"No person or organization can receive consideration for any damage claim if a claim for such damage has already been authorized to be paid, or has been paid by the United States Government, or Philippine Government, or any of their agencies. No person who carried insurance against war perils can receive payment of any claim regardless of whether the insurance claim has been settled, except that otherwise eligible claimants may receive consideration for damages over and above the amount of their insurance policy values.

"The Commission warned against persons who promise to secure favorable claims settlements for others. They cannot keep these promises, the Commission emphasized, and claimant and agent alike are subject to severe penalties if any claimant pays or promises to pay more than 5 per cent of the gross claim payment in return for legal services, or any other services in connection with handling any claim before the Commission."

Provincial Governors are hereby requested to transmit to the municipal authorities the contents hereof without delay.

MARCIANO ROQUE
Undersecretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER NO. 213

December 2, 1946

AUTHORIZING CADASTRAL JUDGE PERFECTO PALACIO TO HOLD COURT IN MALAYBALAY, BUKIDNON, DURING THE MONTH OF DECEMBER, 1946.

In the interest of the administration of justice and pursuant to the request of Judge Anatolio C. Mañalac, the Honorable Perfecto Palacio, Judge of First Instance (Cadastral), is hereby authorized to hold court in the Malaybalay, Bukidnon, during the month of December, 1946, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 214

December 12, 1946

AUTHORIZING CADASTRAL JUDGE VICENTE SANTIAGO TO DECIDE A CERTAIN CASE IN LA UNION.

In the interest of the administration of justice and pursuant to his request, the Honorable Vicente Santiago, Judge of First Instance (Cadastral), is hereby authorized to decide in the Province of La Union, the petition dated November 6, 1946, filed by the defendants under section 2 *et seq.* of Rule 28 of the Rules of Court in civil case No. 16 of the Court of First Instance of Pampanga, entitled "Esmeralda Morales de Madlambayan, as Judicial Administratrix of the Intestate of the spouses Pedro Morales and Elena Hizon, plaintiff, *vs.* Eutiquio Feliciano and Damiana Yusi, defendants" and the counter-motion filed by the plaintiff, dated November 25, 1946.

ROMAN OZAETA
Secretary of Justice

BUREAU OF JUSTICE

ADMINISTRATIVE ORDER (Unnumbered)

December 11, 1946

AUTHORIZING HON. ROBERTO A. GIANZON TO ACT ON CERTAIN ADMINISTRATIVE MATTERS.

Pursuant to the provisions of sections 615, 616 and 618 of the Revised Administrative Code, Hon. Roberto A. Gianzon, Acting First Assistant Solicitor General, is hereby authorized to check, approve or disapprove vouchers which should be approved or disapproved by the Solicitor General—designate special disbursing officers, and to sign the check portion of all treasury warrants drawn against the appropriation of this Bureau.

LORENZO M. TAÑADA
Solicitor General

DEPARTMENT OF NATIONAL DEFENSE

DEPARTMENT ORDER No. 20

December 24, 1946

RULES AND REGULATIONS GOVERNING THE PHILIPPINE ARMY AMNESTY COMMISSION

Pursuant to the power vested in me under Administrative Order No. 17 of the President of the Philippines, dated November 15, 1946, I, Ruperto Kangleon, Secretary of National Defense, hereby promulgate the following rules and regulations which shall govern the Philippine Army Amnesty Commission:

1. *Jurisdiction.*—The Philippine Army Amnesty Commission shall take cognizance of all cases involving persons who apply for the benefits of Proclamation No. 8 and who at the time of the submission of their cases to the Commission are subject to military law. A case is deemed submitted on the date the Commission receives the corresponding written application for amnesty.

2. *Hearings.*—The Commission shall examine the facts and circumstances surrounding each case and, if necessary, conduct summary hearings of witnesses both for the complainant and the accused.

3. *Deputation.*—The Commission may, in any case submitted to it for determination, authorize any officer or board of officers in the active service to conduct investigations in such places and at such times as may be necessary for the purpose of gathering facts and evidence in any case. Facts and evidence so gathered may be made the basis for the Commission to determine whether or not it shall hold summary hearings in the place of residence of either the complainant or the accused. All army units are hereby directed to render all aid and assistance requested by the Commission and by officers or boards of officers deputized by it.

4. *Amnesty Section.*—The Judge Advocate General, Philippine Army, is hereby authorized to create an Amnesty Section in his Office for the purpose of aiding the Commission in the expeditious discharge of its functions. The Judge Advocate General shall submit to the Secretary of National Defense at the end of every month a list of the names of the persons assigned to or temporarily detailed with said Section.

5. *Submission of Records to the Commission.*—The following procedure will be observed:

(*a*) *Cases in the Civil Courts.*—Whenever an accused whose case is pending or has been terminated in any civil court applies to the Commission for the benefits of Proclamation No. 8, appropriate representations will be made by the Commission to the court or fiscal concerned for the forwarding of the records of the case to the Commission.

(*b*) *Court-Martial Cases.*

(1) In terminated cases.—Any case already terminated where the accused is serving final sentence will be accorded prior attention by the Commission. Officers in charge of all Army stockades are directed to invite the attention of all prisoners to the provisions of Proclamation No. 8, Administrative Order No. 17 and this Department Order. Prisoners will be required to state in writing whether or not they want to avail themselves of the provisions of the Proclamation. All affirmative and negative representations will be forwarded by the officer in charge of the stockade without delay to the Adjutant General for immediate transmittal to the Commission. Where affirmative representations have been made, the records of cases will be forwarded to the Commission without delay, and notice of such action served on the accused.

(2) Cases pending review under the Articles of War.—In cases pending review under the Articles of War which involve offenses which may come winthin the provisions of Proclamation No. 8, if committed in furtherance of the resistance movement, the staff judge advocate, the Board of Review, or the Judge Advocate General shall advise the accused of his right to avail himself of the provisions of the Amnesty Proclamation. Negative and affirmative replies will be required of the accused and placed on the records of the case. In the event of an affirmative representation, the records of the case will be transmitted to the Commission, and the accused advised of such transmittal.

(3) Cases pending trial.—All courts-martial and trial judge advocates will, in all proper cases, advise the accused of his right to avail himself of the benefits of Proclamation No. 8. If the accused pleads amnesty the court will immediately suspend trial and forward the records of the case to the appointing authority for transmission to the Commission.

(4) Cases pending preliminary investigation under the 71st Article of War.—In any proper case pending preliminary investigation under Article of War 71, the investigating officer shall apprise the accused of his right to avail himself of the provisions of Proclamation No. 8. Affirmative and negative representations will be made of record. In the event that the accused pleads amnesty, the investigating officer, in addition to receiving evidence for and against the accused in the manner provided for under the 71st Article of War and section 35-a of the Manual for Courts-Martial, shall receive in like manner evidence submitted by the accused to the effect that the provisions of the Amnesty Proclamation apply to his case, and evidence to the contrary submitted by the complainant or offended party. Counsel for the accused and the complainant will be allowed on the issue of amnesty. The investigation required under Article of War 71 will be pursued to completion in any case. Where the accused pleads amnesty, the records of the completed investigation will be forwarded to the Adjutant General for transmittal to the Commission without delay, and the accused advised accordingly.

(5) The Adjudant General is directed to invite the attention of all military prisoners in all penitentiaries and provincial and municipal jails of the provisions of Proclamation No. 8, Administrative Order No. 17, and this Department Order, and to require such prisoners to signify in writing whether or not they desire to avail themselves of the provisions of Proclamation No. 8. Affirmative and negative representations will be transmitted to the Commission. In the event of affirmative representations, the records of the case will be forwarded to the Commission and the accused advised of such reference.

(6) Other cases.—In all other cases not included in the foregoing, where the accused applies for amnesty, the records of the case will be forwarded to the Commission, but in no instance will the records be forwarded without a complete preliminary investigation under Article of War 71.

6. *Procedure before the Commission and officers or board of officers appointed under paragraph 3 above.*—The interested parties shall be notified in advance of the date of the hearing or investigation. The complainants and the accused may be represented by counsel. The hearing by the Commission and the investigation by an officer or a board of officers deputized by the Commission shall be summary and the issue limited to whether or not the case falls within the terms of the Proclamation.

7. *Per diem.*—Each member of the Commission, and of any board of officers and officers deputized under paragraph 3 above, will be entitled to reimbursement of actual expenses not exceeding ₱10 for every day of session outside of their station, from the appropriations of the Department of National Defense, allotted to the Philippine Army. Persons employed by the Commission and by the officers or board of officers will be entitled to transportation expenses and per diems from the same appropriations.

8. *Reports.*—A monthly report of cases submitted to and decided by the Commission shall be rendered to the Secretary of National Defense.

RUPERTO K. KANGLEON
Secretary of National Defense

DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS

APPOINTING MR. ROQUE GARCIA MEMBER OF THE BOARD OF EXAMINERS FOR CHEMICAL ENGINEERS.

December 9 1946

DEPARTMENT ORDER NO. 6

Pursuant to the provisions of Act No. 2985, as amended, Mr. Roque Garcia is hereby appointed member of the Board of Examiners for the profession of Chemical Engineer, vice Jose I. del Rosario, resigned, effective this date. The Board is now composed of Messrs, Felix V. Espino, chairman, and Alfredo F. de Villa-Abille and Roque Garcia, members.

Mr. Garcia shall hold office for the unexpired term of Mr. Del Rosario.

By virtue hereof Mr. Garcia shall, as soon as possible, qualify and assume the duties of his office and enjoy all the privileges and emoluments thereunto appertaining as prescribed in said Act No. 2985. His oath of office shall be filed and recorded in this Department.

SERGIO BAYAN
Undersecretary

DECISIONS OF THE SUPREME COURT

[No. L-268. Marzo 28, 1946]

NICASIO SALONGA Y RODRIGUEZ, recurrente, *contra* J. P. HOLLAND, en su capacidad como Jefe de Policía y ERIBERTO MISA, en su capacidad como Director de Prisiones, recurridos.

1. PROCEDIMIENTO CRIMINAL; ARRESTO SIN MANDAMIENTO JUDICIAL; PRÓFUGO DE LA LEY.—El recurrente no es más que un simple prófugo de la ley y no tiene derecho a exigir que el que le arreste esté armado con un mandamiento de arresto: un preso que evade el cumplimiento de su condena, escapándose de la vigilancia de un policía o de una institución penal puede ser arrestado, sin mandamiento de arresto, no solamente por un agente de autoridad sino aún por un particular (artículo 6, Regla 109, Reglamento de los Tribunales).
2. HABEAS CORPUS; DETENCIÓN EN VIRTUD DE SENTENCIA VÁLIDA.—Solamente procede decretar la libertad del recurrente en la actuación de *habeas corpus* si está detenido ilegalmente, y no si "se encuentra legalmente recluído en virtud de sentencia válida" (32 Jur. Fil., 38).
3. ID.; ID.; LEGALIDAD DE LA DETENCIÓN.—En esta jurisdicción se ha declarado repetidas veces "que una reclusión en debida forma, fundada en una sentencia definitiva, en que se le condena y sentencia al procesado en una causa criminal, es prueba concluyente de la legalidad de su detención."

JUICIO ORIGINAL en el Tribunal Supremo. *Habeas Corpus.*

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Yatco & Yatco en representación del recurrente.

D. Edilberto Barot, Fiscal Auxiliar, en representación del recurrido Coronel Holland.

Nadie compareció en representación del recurrido Director de Prisiones.

PABLO, *M.:*

En enero 12, 1946, Fidela Fernandez de Salonga presentó una solicitud de *habeas corpus* a favor de su esposo Nicasio Salonga y Rodriguez, alegando que éste había sido arrestado en enero 10, sin mandamiento de arresto y sin que haya sido acusado por ningún delito, y pidió la expedición de una orden de *habeas corpus* en que se ordene al recurrido Coronel Holland, Jefe de Policía de Manila, que produzca la persona del detenido ante el Juzgado de Primera Instancia de Manila.

En enero 14, el Juez Ocampo expidió la orden pedida. En el día señalado, enero 15, el Coronel Holland presentó su contestación alegando, entre otras cosas, que Nicasio Salonga ha sido arrestado el 10 de enero a las 9:30 de la mañana y al día siguiente a las 2:58 ha sido entregado al Director de Prisiones en Muntinglupa, Rizal; que ya no está en su poder el detenido y pidió la denegación de la solicitud. En vista de esta contestación, los abogados del recurrente presentaron una solicitud enmendada incluyendo como uno de los recurridos al Director de Prisiones.

En enero 16, el juzgado *a quo* ordenó la comparecencia del Director de Prisiones con la persona del detenido el enero 18, a las 9 de la mañana.

En enero 19, el Juzgado de Primera Instancia de Manila sobreseyó la solicitud en cuanto al recurrido Director de Prisiones y en enero 21, la sobreseyó en cuanto al otro recurrido, el Coronel Holland, como Jefe de Policía de la Ciudad de Manila. El recurrente apeló.

Del expediente aparecen probados los siguientes hechos:

Nicasio Salonga y Rodriguez fué remitido al Director de Prisones en mayo 11, 1944, por haber sido condenado por el Juzgado de Primera Instancia de Manila en la causa criminal No. 94947 por el delito de disparo de armas de fuego a seis meses y un día de prisión correccional, con las costas (Anexo A). Desde dicho día quedó recluído en la cárcel de Bilíbid en Muntinglupa; fué trasladado el junio 3, 1944, al Camp Nichols, Rizal, bajo la custodia de los guardias de la misma institución; a las 3:50 de la tarde del mismo día se escapó; el 10 de enero, 1946, a las 9:30 de la mañana, fué arrestado en la calle Juan Luna, Manila, por un policía de la Ciudad de Manila y fué entregado al día siguiente, enero 11, a las 2:58 de la tarde al Director de Prisiones en la cárcel de Bilíbid en Muntinglupa, Rizal, para cumplir el resto de la pena no sufrida aún.

Del 11 de mayo, 1944, en que comenzó a sufrir su condena hasta el 3 de junio del mismo año en que se escapó han transcurrido 23 días. Para cumplir su condena debe permanecer en la cárcel de Bilíbid de Muntinglupa, pues, unos cinco meses más.

Se pide la libertad del recurrente porque fué arrestado sin mandamiento judicial. Es infundada la petición.

El recurrente no es más que un simple prófugo de la ley y no tiene derecho a exigir que el que le arreste esté armado con un mandamiento de arresto: un preso que evade el cumplimiento de su condena, escapándose de la vigilancia de un policía o de una institución penal puede ser arrestado, sin mandamiento de arresto, no solamente por un agente de autoridad sino aun por un particular (artículo 6, Regla 109, Reglamentos de los Tribunales).

Esta disposición está sostenida por la jurisprudencia Anglo-Americana:

"An officer may arrest without a warrant a prisoner who has escaped from custody after trial and commitment (Mcqueon *vs.* State, 130 Ala., 136; 30 S., 414; *In re* Collins, 8 Cal. A., 367; 97 F., 188; Harper *vs.* State, 129 Ga., 770; 50 SE., 792; *Ex parte* Eldridge, 3 Okl. Cr., 499; 106 F., 980; 139 AmSR, 967; 27 LRANS, 625; Com. *vs.* Sheriff, 1 Grant., 187; *Ex parte* Sherwood, 29 Tex. A., 334; 15 SW., 812) and it has been held that even a private person may without a warrant arrest a convicted felon who has escaped and is at large; * * * (5 C. J., 437).

"An officer may arrest without a warrant a prisoner who has escaped from custody after trial and commitment (State *vs.* Finch, 99 S. E., 409; 177 N. C., 599), and it has been held that even a private person may, without a warrant, arrest a convicted felon who has escaped and is at large, since he might also, before conviction, have arrested the felon." (6 C. J. S., 626.)

En cuanto a la detención del recurrente en la cárcel de Muntinglupa, el recurso de *habeas corpus* no puede prosperar: él está legalmente recluído en virtud de la condena de seis meses y un día de prisión correccional que le impuso el Juzgado de Primera Instancia de Manila en mayo 11, 1944, por disparo de armas de fuego, infracción del Código Penal Revisado. Esta sentencia dictada durante la ocupación japonesa es válida y debe ser cumplida. (Co Kim Cham *contra* Valdez Tan Keh, L–5, 41 Gac. Off., 779.)

Solamente procede decretar la libertad del recurrente en la actuación de *habeas corpus* si está detenido ilegalmente, y no si "se encuentra legalmente recluído en virtud de sentencia válida." (32 Jur. Fil., 38.)

En esta jurisdicción se ha declarado repetidas veces "que una reclusión en debida forma, fundada en una sentencia definitiva, en que se le condena y sentencia al procesado en una causa criminal, es prueba concluyente de la legalidad de su detención." (Felipe *contra* Director de Prisiones, 24 Jur. Fil., 125 y Quintos *contra* Director de Prisiones, 55 Jur. Fil., 324.)

Se confirma el sobreseimiento de la solicitud sin pronunciamiento sobre costas.

Moran, Pres., Parás, Jaranilla, Feria, y *Briones, MM.,* están conformes.

Se deniega la solicitud.

[No. L–319. March 28, 1946]

GO TIAN SEK SANTOS, petitioner, *vs.* ERIBERTO MISA, Director of Prisons, respondent

HABEAS CORPUS; DETENTION UNDER COMMONWEALTH ACT NO. 682; ESPIONAGE; CITIZENSHIP, IMMATERIAL.—The foreign status of a political detainee does not exclude him *ipso facto* from the scope of the provisions of section 19 of Commonwealth Act

No. 682, because he may be prosecuted for espionage, a crime not conditioned by the citizenship of the offender, and considered as an offense against national security.

ORIGINAL ACTION in the Supreme Court. *Habeas Corpus.*

The facts are stated in the opinion of the court.

Mariano Trinidad for petitioner.

First Assistant Solicitor-General Reyes and *Solicitor De los Angeles* for respondent.

BENGZON, *J.:*

The petitioner avers he is a Chinese citizen apprehended in February, 1945, by the Counter Intelligence Corps of the United States Army, turned over last September, to the Commonwealth Government, and since then detained by the respondent as a political prisoner. Such detention, he claims, is illegal, because he has not been charged before, nor convicted by, the judge of a competent court, and because he may not be confined under Act No. 682, as he owes allegiance neither to the United States nor to the Commonwealth of the Philippines.

The Solicitor-General, for the respondent, admits the detention, for active collaboration with the Japanese, doubts the allegation of citizenship, and maintains that, conceding *arguendo* petitioner's alienage, he may be charged for espionage, a crime against national security wherein allegiance is immaterial, and may, therefore, be held in custody under Commonwealth Act No. 682.

As the record stands, the petitioner must be deemed a Chinese subject. The commitment order No. 291 issued by the United States Army authorities describes him as such. But it does not follow that he is entitled to liberty now. He is included among those contemplated by section 19 of Commonwealth Act No. 682, which reads partly:

"Upon delivery by the Commander-in-Chief of the Armed Forces of the United States in the Philippines of the persons detained by him as political prisoners, to the Commonwealth Government, the Office of Special Prosecutors shall receive all records, documents, exhibits and such other things as the Government of the United States may have turned over in connection with and/or affecting said political prisoners, examine the aforesaid records, documents, exhibits, etc., and take, as speedily as possible, such action as may be proper: *Provided, however,* * * * *

* * * * * * *

"*And provided, further,* That in the interest of public security, the provisions of article one hundred twenty-five of the Revised Penal Code, as amended, shall be deemed, as they are hereby, suspended, insofar as the aforesaid political prisoners are concerned, until the filing of the corresponding information with the People's Court, but the period of suspension shall not be more than six (6) months

from the formal delivery of said political prisoners by the Commander-in-Chief of the Armed Forces of the United States in the Philippines to the Commonwealth Government."

His foreign status does not exclude him *ipso facto* from the scope of the above provisions. As stated by the Solicitor-General, he might be prosecuted for espionage (Commonwealth Act No. 616) a crime not conditioned by the citizenship of the offender, and considered as an offense against national security.

The contentions advanced during the oral argument, challenging the validity of said section 19, Commonwealth Act No. 682, upon constitutional grounds must be overruled, in view of our decision in G. R. No. L–200, Laurel *vs.* Director of Prisons,[1] copy of which will be furnished to petitioner by the clerk of this court. The petition is denied, with costs.

Moran, C. J., Ozaeta, Jaranilla, Feria, De Joya, Pablo, Hilado, and *Briones, JJ.*, concur.

Paras, J., concurs in the result.

PERFECTO, *J.*, concurring and dissenting:

We concur with the majority's pronouncement to the effect that petitioner is not excluded from the group of persons contemplated by section 19 of Commonwealth Act No. 682, notwithstanding his foreign status as a Chinese subject. We also agree that, if there are facts and evidence to justify it, he might be prosecuted for espionage, or any other crime not conditioned by the citizenship of the offender. But we disagree as to the denial of the petition, it appearing that petitioner is being deprived of his personal liberty without any due and legal process of law, and as to this question, we refer to the stand we have taken in our dissenting opinion in case G. R. No. L–200, Laurel *vs.* Director of Prisons (42 Off. Gaz., 2847), the contentions therein we reiterate here.

Petition denied.

[No. 49108. March 28, 1946]

In the matter of the Testate Estate of the late MARGARITA DAVID. GONZALO D. DAVID, petitioner and appellant, *vs.* CARLOS M. SISON, oppositor and appellant.

1. DONATIONS; MORTIS CAUSA; OWNERSHIP, ELEMENTS OF.—The donation is *mortis causa* because the combined effects of the circumstances surrounding the execution of the deed of donation and the clauses thereof could not have taken effect before the death of the donor, M. D. According to the terms of the deed, the most essential elements of ownership—the right to dispose of the donated properties and the right to enjoy the products, profits, possession—remained with the donor during

[1] 42 Off. Gaz., 2847.

her lifetime, and would accrue to the donees only after the donor's death.

2. ID.; ID.; PROPERTIES INCLUDED.—There being enough properties not included in the donation to answer for the obligations of the estate of the deceased, the donated properties, which were the object of extrajudicial partition between the donees, are not answerable for the obligations left by said deceased.

3. HEIR, LEGATEE, DEVISEE, OBLIGATIONS OF.—No heir, legatee, or devisee may elude the payment of any obligation of the estate in which the estate as a whole is answerable, and no discrimination can be made in favor of or against any heir or heiress.

4. ATTORNEY'S FEES; HOW FIXED.—In estimating the attorney's fees that should be awarded to petitioner, consideration must be taken of the fact that the services appear to be generally of routinary character, not needing any special skill and the exercise of unusual efforts, nor the employment of long hours of legal study and research, nor the waste or expenditure of extraordinary length of time that might deprive him of the opportunity to render legal services in other cases and collect profitable legal fees, and of the fact that petitioner is a near relative of the deccased and would have received a substantial share in the properties left by deceased, if the latter had died intestate and had not decided to adopt as her children two nieces who were in the same rank of relationship with the deceased as petitioner.

APPEAL from a resolution of the Court of First Instance of Manila. Diaz, J.

The facts are stated in the opinion of the court.

Gonzalo D. David in his own behalf.
Carlos M. Sison in his own behalf.

PERFECTO, *J.:*

This is an appeal against a resolution issued by Judge Gervasio Diaz, of the Court of First Instance of Manila, ordering the administrator of the estate of Margarita David to pay petitioner as attorney's fees, for services rendered to the estate, from March, 1941, to March, 1943, in the amount of ₱18,000.

In the petition filed in the lower court on March 24, 1943, petitioner prayed that he be awarded an amount equivalent to 5 per cent of the original inventoried estate, namely, the sum of ₱72,779.10, although in his brief, dated April 11, 1944, he claims that the 5 per cent he is charging should be estimated not only on the basis of the inventoried estate but including besides the income thereof for two and one half years, totalling ₱1,627,507.24, and 5 per cent thereof would amount to ₱81,375.36, more or less.

The oppositor contended that the amount granted by the lower court is exorbitant, but failed to state in his brief what the reasonable amount should be. At the hearing of this case he manifested he would consider reasonable the amount of ₱3,000, although he would not mind any

amount that may be fixed, provided the payment of any part of said attorney's fees would not be shouldered by his wife, Priscila F. Sison, one of the heiresses of the estate, nor affect any part of the property adjudicated to her.

From the above, it can be seen that the two contending parties went to possible extremes, allowed by their respective feelings and imaginations, and that the reasonable amount should be found between the two extremes. It is inconceivable that two reasonable persons, such as we presume the petitioner and the oppositor to be, neither one showing that he is beyond any standard of normality, both cultured and trained in the science of law, should disagree from ₱3,000 to ₱81,375.36 in appraising the pecuniary value of the legal services in question. The reason for this so wide a difference must be found in the fact that both allowed themselves to give way, not to fair dealing and fair judgment, but to uncontrollable emotions aroused by intransigent conflict of monetary interest.

The parties thresh in this appeal three main questions:

(1) Whether the donation executed by the deceased on September 6, 1940, as appears in Exhibit 'FFFFF,' should be considered as *inter vivos* or *mortis causa*, the parties placing great importance on this question under the theory that, in the first place, the donated properties must be excluded from the estate proceedings; but in case the donation is *mortis causa*, that should be included in the inventory of the estate.

(2) Whether heiress Priscila F. Sison should or should not shoulder the corresponding burden in the payment of petitioner's fees for the properties adjudicated to her.

(3) The reasonable amount that must be granted to petitioner as attorney's fees.

The lower court, after considering the facts in the case, arrived at the conclusion that the donation was *inter vivos*, on the strength of the doctrine that a donation in order to be *mortis causa* must have for consideration the donor's death.

We do not have before us the full text of the deed of donation, but only the following paragraphs of the same as quoted in the record on appeal of petitioner and in the briefs of both parties:

"Na ang naturang 'donor,' Margarita David y Puato, alang-alang sa malaki niyang pagtiñgin, pagliñgap at pagmamahal sa mga nabanguit na 'donees,' Narcisa de la Fuente at Priscila de la Fuente, sa pamamagitan nang kasulatang ito, malayang ibinibigay at ipinagkakaloob sa mga naturang Narcisa de la Fuente at Priscila de la Fuente, at sa kanilang mga tagapagmana, 'albacea' at 'Administradores', sa habang panahon, ang kanyang mga título, interes at

participación sa mga sumusunod na ari-arian na pawang malines sa lahat nang mga pananagutan." (Rec. on Appeal, pp. 209, 210.)

"Datapwa't ang lahat nang mga tubo at pakinabañgan nang mga pagaaring nasasaad sa itaas nito, ay para sa kapakinabañgan nang nagbibigay o 'donor' na si Margarita David y Puato hanggang siya ay hindi binabawi-an nang buhay nang Maykapal; at ang mga pinagbibigyan na si Narcisa de la Fuente at Priscila de la Fuente ay hindi maaaring maipagbili, maisangla, maipagpalit o sa ano pa man paraan, kung walang kaalaman at pahintulot nang naturang Margarita David y Puato." (Rec. on Appeal, pp. 212, 213.)

The following facts are pointed to us concerning the deed of donation:

(1) That on December 20, 1938, Margarita David executed her first and only last will and testament in favor of her grandnieces Narcisa de la Fuente de Teodoro and Priscila de la Fuente de Sison as residuary heiresses, and other relatives of the same degree as legatees and devisees.

(2) That on October 21, 1939, Margarita David adopted, in Special Proceedings No. 55861 of the Court of First Instance of Manila, said grandnieces Narcisa de la Fuente de Teodoro and Priscila de la Fuente de Sison, making them her adopted children.

(3) That on September 6, 1940, Margarita David executed the deed of donation in question in favor of her newly adopted children, the same testamentary residuary heiresses, donating to them practically the same properties disposed of in the will.

(4) That on November 18, 1940, the Collector of Internal Revenue rejected the donor's and donees' gift tax returns on the deed of donation in question, on the ground that the donation is a transfer in contemplation of death and subject to an estate and inheritance taxes, which should be paid upon Margarita David's death in accordance with section 88(*b*) of the Internal Revenue Code.

(5) That, in fact, after the death of Margarita David the estate and inheritance taxes on the properties were paid.

(6) That, acting upon the claim made by the probate clerk and by the cashier of the Court of First Instance of Manila, said court ordered the executor to pay an additional docketing fee of ₱780 based on the inventory of the estate as valued at ₱1,415,581.99, including the properties disposed of in the deed of donation.

(7) That when Margarita David signed the deed of donation she was already irretrievably ill and she knew that the end was near and inevitable.

(8) That since the donation was executed on September 6, 1940, until Margarita David's death on February 24, 1941, less than six months had elapsed.

(9) That from the execution of the deed of donation up to the donor's death, the donated properties remained in her office entitled "Margarita David, Administrator's office."

(10) That Margarita David has reserved to herself the usufruct of all the donated properties during her life-time, and provided that the donated properties could not be alienated by the donees without the knowledge and consent of the donor, Margarita David.

(11) That the donees, being the universal heirs of Margarita David, so her adopted daughters, without the deed of donation or any will, were to inherit the donated properties by operation of law.

Petitioner mentions, furthermore, that by the adoption of the above-mentioned grandnieces, the inheritance tax was reduced to about one-third of the amount it would have been paid if the said grandnieces were not adopted as children of Margarita David, the inheritance tax actually paid being ₱224,000, while, otherwise, the amount would have been ₱672,000; and, lastly, the tax to be paid could have been further reduced by the execution of the deed of donation, as the rate schedule for gift tax is lower than the rate schedule for inheritance tax.

In one of the paragraphs of the deed of donation above-quoted, it appears that all rents, proceeds, fruits, of the donated properties shall remain for the exclusive benefit and disposal of the donor, Margarita David, during her lifetime; and that, without the knowledge and consent of the donor, the donated properties could not be disposed of in any way, whether by sale, mortgage, barter, or in any other way possible, thus making the donees just as paper owners of the properties which, for all practical purposes, remained the properties of Margarita David.

From all the foregoing, we conclude that the donation in question is, in fact, a donation *mortis causa*, because the combined effect of the circumstances surrounding the execution of the deed of donation and of the above-quoted clauses thereof could not have taken effect before the death of Margarita David. According to the terms of the deed, the most essential elements of ownership—the right to dispose of the donated properties and the right to enjoy the products, profits, possession—remained with Margarita David during her lifetime, and would accrue to the donees only after Margarita David's death.

Although we arrived at the conclusion that the donation in question is a donation *mortis causa*, we are not inclined to support petitioner's contention that, in the present case, the donated properties should be included in the inventory of the estate and should follow the same proceed-

ings as if they were not donated at all, it appearing that the donated properties (which, by the way, were the object of an extrajudicial partition between the donees) are not necessary to answer for the obligations left by the deceased, there being enough properties not included in the donation to answer for said obligations.

The second question, that is, whether heiress Priscila F. Sison should or should not shoulder the corresponding burden in the payment of petitioner's fees for the properties adjudicated to her, our opinion is that the question must be answered affirmatively. No heir, legatee, or devisee may elude the payment of any obligation of the estate which should be answered by the estate as a whole in which no discrimination can be made in favor of or against any heir or heiress.

The third question is not so easy to dispose of, as no fast rules can be set up upon which the reasonable attorney's fees of petitioner can be estimated with mathematical accuracy.

Memorandum of legal services rendered by petitioner from March, 1941, to March, 1943, appears as part of his petition dated March 24, 1943, reproduced in his record on appeal, pages 6 to 42. An additional memorandum of services rendered until August, 1943, is included in the supplement pleading, pages 121–128 of the same record on appeal.

We have examined both memoranda of legal services and, although petitioner spent about two years and a half, the services appear to be generally of routinary character, not needing any special skill nor the exertion of unusual efforts, nor the employment of long hours of legal study and research, nor the waste or expenditure of extraordinary length of time that might deprive him of the opportunity to render legal services in other cases and collect profitable legal fees.

But, at the same time, while there is nothing in the services to require or justify a special compensation, in estimating the reasonable fees that should be awarded to petitioner, we have considered, among other factors and circumstances, the length of time which ran from the first service to the last—around two years and a half—the number of services rendered, and the fact that petitioner, being a near relative of the deceased, would have received a substantial share in the numerous properties left by the deceased, if the latter had died intestate and had not decided to adopt as her children two nieces who were in the same rank of relationship with the deceased as petitioner. It appears that petitioner had received only a small legacy valued at less than ₱1,000.

After considering all the facts and circumstances in this case, in an effort to fix an amount that could be as reasonable as possible, the Court decided that petitioner is entitled to the sum of ₱10,000, as attorney's fees, to be paid by the estate of the deceased Margarita David, and so modify the appealed resolution, without pronouncement as to costs.

Ozaeta, De Joya, Hilado, and *Bengzon, JJ.,* concur.

Resolution modified.

[No. L–279. March 29, 1946]

ENRIQUE BRIAS, petitioner and appellee, *vs.* PACIFICO VICTORIANO and VICENTE BAUTISTA, Judge of Municipal Court of Manila, respondents and appellants.

EXECUTION; FINAL JUDGMENT; POWER OF COURT LIMITED TO EXECUTION; CASE AT BAR.—His Honor, Judge M. R., of the Court of First Instance of Manila, held that the judgment of Judge C having become final, the power of the respondent judge thereover was limited to decreeing its execution in accordance with its terms. He consequently held that the respondent municipal judge had no jurisdiction to suspend all proceedings for the execution of Judge C's judgment so long as petitioner has not definitely elected his remedy; and that the respondent judge should confine himself to determining whether or not in accordance with the terms of Judge C's judgment and the facts bearing on the conditions of said judgment, its execution should be ordered. This decision of Judge M. R. is in accordance with the law applicable to the facts of the case.

APPEAL from a judgment of the Court of First Instance of Manila. Roxas, J.

The facts are stated in the opinion of the court.

Barcelon & Hilario for appellants.
Eduardo P. Caguioa for appellee.

HILADO, *J.:*

This is an appeal by Pacifico Victoriano and the Hon. Vicente Bautista, Judge of the Municipal Court of Manila, from the decision of the Court of First Instance of Manila, Judge Mamerto Roxas presiding, dated November 1, 1945 in civil case No. 71183 of said Court of First Instance, wherein Enrique Brias, as petitioner, instituted what he denominated certiorari proceedings against the said Pacifico Victoriano and Hon. Vicente Bautista, as such municipal judge, to annul an order dated August 11, 1945 entered by the said municipal judge in civil case No. II–927 of the said municipal court (Exhibit H), which proceedings in effect also involved a prayer for a writ of mandamus to compel the respondent judge to revoke his order of July 28, 1945 suspending the writ of execution and enforcing his order of execution of July 23, 1945.

On July 11, 1944, the Municipal Court of Manila, Judge Guillermo Cabrera presiding, rendered its decision (Exhibit A) in civil case No. II–927, for ejectment and recovery of rents, brought by Enrique Brias, as plaintiff, against Pacifico Victoriano, as defendant, whereby said defendant was ordered to pay the rents for the following months commencing with July, 1944 as they fall due, plus the amount of ₱10 monthly to amortize the sum of ₱597 to which the rents in arrears amounted, and to vacate the house in question in case of non-fulfillment in the payment of the said obligations. Under the holding of the majority of this Court in favor of the validity of judicial proceedings in the Japanese-sponsored courts during the Japanese occupation of the Philippines—with which the writer has never agreed but which he nevertheless has to respect—this judgment of Judge Cabrera should be considered valid. After the liberation of Manila, believing that the record of that case had been destroyed, Enrique Brias lodged in the same municipal court a new action of ejectment and recovery of rents in relation to the same house. In this second action the defendant Pacifico Victoriano filed a motion to dismiss, alleging the pendency of the former case, which motion was disposed of by Hon. Almeda Lopez, another judge of said municipal court, by ordering the dismissal of the complaint in the new case (Exhibit B). The aforesaid judgment of Judge Cabrera having become final, Enrique Brias under date of July 20, 1945 filed a motion (Exhibit C) asking for the execution of the said judgment, and Judge Bautista, granting the motion, ordered the execution of the judgment on July 23, 1945. But upon petition of the defendant Pacifico Victoriano, based upon the allegation that he had not violated the conditions of the judgment of Judge Cabrera, respondent Judge Bautista by order dated July 28, 1945 (Exhibit D) quashed the writ of execution dated July 23, 1945. During the hearing of the motion for execution before respondent Judge Bautista in the old case, respondent Pacifico Victoriano filed a motion praying that in view of the fact that the petitioner was attempting to revive the new case, all proceedings be suspended relative to the execution of the judgment of Judge Cabrera until such time as petitioner shall have definitely elected his remedy, that is, whether he chooses to continue the new case or to seek the execution of Judge Cabrera's judgment in the old one. Respondent Judge Bautista thereupon entered his order (Exhibit H) dated August 11, 1945, already mentioned, and held in abeyance all proceedings connected with petitioner's petition for execution of the aforecited judgment of Judge Cabrera "until the plaintiff chooses the course of action he will take either to reinstate civil case No. 609 (later

case), or abandon the present case." Enrique Brias, not agreeing with said order dated August 11, 1945, filed a petition for certiorari (and in effect also for mandamus) with the Court of First Instance of Manila, seeking the annulment of the same order, alleging that the respondent judge of the municipal court of Manila had entered the said order without jurisdiction, at the same time praying that said judge be required to revoke his order dated August 28, 1945 quashing the writ of execution, and that he reinstate his order of July 23, 1945 decreeing the execution of the judgment of Judge Cabrera.

His Honor, Judge Mamerto Roxas, of the Court of First Instance of Manila, held that the above-mentioned judgment of Judge Cabrera having become final, the power of the judge thereover was limited to decreeing its execution in accordance with its terms. He consequently held that the respondent municipal judge had no jurisdiction to suspend all proceedings for the execution of Judge Cabrera's judgment so long as petitioner has not definitely elected his remedy; and that the judge should confine himself to determining whether or not in accordance with the terms of Judge Cabrera's judgment and the facts bearing on the conditions of said judgment, its execution should be ordered.

In view thereof Judge Roxas set aside respondent Judge Bautista's order of August 11, 1945, and denied the petition for the revocation of the order of July 28, 1945 and the reinstatement of the order of July 23, 1945, both herein above mentioned, on the ground that before respondent Judge Bautista can order the execution of the judgment of Judge Cabrera he should first determine whether or not the defendant (herein respondent Victoriano) has violated any of the conditions expressed in the same judgment.

This decision of Judge Mamerto Roxas is in accordance with the law applicable to the facts of the case.

Wherefore, the judgment of Judge Mamerto Roxas complained of upon this appeal is affirmed without special pronouncement as to costs. So ordered.

Ozaeta, De Joya, Perfecto, and *Bengzon, JJ.*, concur.

Judgment affirmed.

[No. L-286. March 29, 1946]

FREDESVINDO S. ALVERO, petitioner, *vs.* M. L. DE LA ROSA, Judge of First Instance of Manila, JOSE R. VICTORIANO, and MARGARITA VILLARICA, respondents.

1. APPEAL; FAILURE TO PERFECT APPEAL; EXTENSION BY COURT OF TIME FOR APPEAL.—Failure to perfect the appeal, within the time prescribed by the Rules of Court, will cause the judgment

to become final, and the certification of the record on appeal thereafter, cannot restore the jurisdiction which has been lost. The period within which the record on appeal and appeal bond should be perfected and filed may, however, be extended by order of the court, upon application made, prior to the expiration of the original period.

2. COURTS; FORCE AND EFFECT OF RULES OF COURT.—Rules of Courts, promulgated by authority of law, have the force and effect of law; and rules of court prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business.

3. ID.; ID.; STRICT COMPLIANCE WITH RULES OF COURT, MANDATORY.—Strict compliance with the rules of court has been held mandatory and imperative, so that failure to pay the docket fee in the Supreme Court, within the period fixed for that purpose, will cause the dismissal of the appeal. In the same manner, on failure of the appellant in a civil case to serve his brief, within the time prescribed by said rules, on motion of the appellee and notice to the appellant, or on its own motion, the court may dismiss the appeal.

4. APPEAL; MOTION FOR RECONSIDERATION AND NEW TRIAL; WHEN DOES IT SUSPEND TIME FOR APPEAL.—In his motion for reconsideration and new trial, dated December 27, 1945, counsel for petitioner did not point out specifically the findings or conclusions in the judgment, which are not supported by the evidence or which are contrary to law, making express reference to the pertinent evidence or legal provisions, as expressly required by Rule 37, section 2, paragraph (*c*) of the Rules of Court. Motions of that kind have been considered as motions *pro forma* intended merely to delay the proceeding, and, as such, they cannot and will not interrupt or suspend the period of time for the perfection of the appeal.

ORIGINAL ACTION in the Supreme Court. *Certiorari.*

The facts are stated in the opinion of the court.

Revilla & Palma for petitioner.

Francisco Claravall for respondents.

DE JOYA, *J.:*

This is an original petition for certiorari filed in this Court.

The record shows that, on June 25, 1945, respondent Jose R. Victoriano had filed a complaint, in the Court of First Instance of the City of Manila, against petitioner Fredesvindo S. Alvero and one Margarita Villarica, alleging two causes of action, to wit, (1) to declare in force the contract of sale, made on October 1, 1940, between said Jose S. Victoriano and Margarita Villarica, of two (2) parcels of land in the Manotoc subdivision, Balintawak, in the barrio of Calaanan, municipality of Caloocan, Province of Rizal, with a combined area of 480 sq. meters, which land was subsequently sold by said Margarita Villarica, in favor of petitioner Fredesvindo S. Alvero, on December 31, 1944,

for the sum of ₱100,000 in Japanese military notes; and (2) to declare said subsequent sale null and void.

On July 7, 1945, Margarita Villarica filed an answer to said complaint, expressly admitting having sold said land to Fredesvindo S. Alvero, for ₱100,000 in December, 1944, due to the imperative necessity of raising funds with which to provide for herself and family, and that she did not remember the previous sale; at the same time, offering to repurchase said land from Fredesvindo S. Alvero in the sum of ₱5,000, but that the latter refused to accept the offer.

On July 13, 1945, Fredesvindo S. Alvero, in answering said complaint, denied the allegations made therein, and claimed exclusive ownership of the land in question, and at the same time set up a counterclaim and cross-claim in his answer, demanding from Jose R. Victoriano a ₱200 monthly rent on said property, beginning from February, 1945, plus ₱2,000 as damages.

On July 21, 1945, Jose R. Victoriano filed an answer to said counterclaim, denying Fredesvindo S. Alvero's alleged ownership over said land, and the other allegations contained in Alvero's answer.

After the trial of the case before the Hon. Mariano L. de la Rosa, Judge of the Court of First Instance of the City of Manila, one of the respondents in this case, on November 16, 1945, said respondent judge rendered his decision, in which it was declared that the two (2) parcels of land in question, with a combined area of 480 sq. meters had been sold by Margarita Villarica to Jose R. Victoriano, since October 1, 1940, for the sum of ₱6,000 on the condition that the purchaser should make a down payment of ₱1,700, and a monthly payment of ₱76.86 in 120 equal monthly installments; that Jose R. Victoriano continued making said monthly payments until December, 1941, but that owing to the war-time conditions then existing, Margarita Villarica agreed verbally to suspend such payments until the restoration of peace; that immediately after said sale of said land to him, Jose R. Victoriano took possession thereof and made improvements thereon to the amount of ₱800, and continued occupying said property until December, 1944, when he abandoned the same to go to evacuation places, but returned thereto in February, 1945; that Margarita Villarica, having forgotten the sale of said land to Jose R. Victoriano, sold the same for ₱100,000 in Japanese military notes, on December 31, 1944, to Fredesvindo S. Alvero, but afterwards offered to repurchase said property from him, for the sum of ₱8,000 in genuine Philippine currency, after liberation; that Fredesvindo S. Alvero presented the deed of sale, executed in his favor, to the

Register of Deeds of the City of Manila, on January 5, 1945, and took possession of said property in December, 1944, but afterwards found Jose R. Victoriano in the premises in February, 1945; that in the contract of sale executed by Margarita Villarica, in favor of Jose R. Victoriano, it was agreed that, upon failure of the purchaser to make payments of three (3) successive monthly installments, the vendor would be free to sell the property again, forfeiting the payments made, except in case of *force majeure;* that there was really a verbal agreement between Margarita Villarica and Jose R. Victoriano, made in February, 1942, for the suspension of the payment of the monthly installments until the restoration of peace; and that although Jose R. Victoriano had presented the deed of sale, executed in his favor, to the Register of Deeds, in Pasig, Rizal, like Fredesvindo S. Alvero, he had also failed to secure the transfer of title to his name. And considering that Jose R. Victoriano's document was older than that of Fredesvindo S. Alvero, and that he had taken possession of said property, since October 1, 1940, the respondent judge rendered his decision in favor of Jose R. Victoriano, adjudging to him the title over the property in question, including all the improvements existing thereon, and dismissed the counterclaim.

On November 28, 1945, Fredesvindo S. Alvero was notified of said decision; and on December 27, 1945, he filed a petition for reconsideration and new trial, which was denied on January 3, 1946; and of said order he was notified on January 7, 1946.

On January 8, 1946, Fredesvindo S. Alvero filed his notice of appeal and record on appeal simultaneously in the lower court, without filing the ₱60-appeal bond.

On January 14, 1946, Jose R. Victoriano filed a petition to dismiss the appeal, and at the same time, asked for the execution of the judgment.

On January 15, 1946, Fredesvindo S. Alvero filed an opposition to said motion to dismiss, alleging that on the very same day, January 15, 1946, said appeal bond for ₱60 had been actually filed, and alleged as an excuse, for not filing the said appeal bond, in due time, the illness of his lawyer's wife, who died on January 10, 1946, and buried the following day.

On January 17, 1946, the respondent judge, Hon. Mariano L. de la Rosa, ordered the dismissal of the appeal, declaring that, although the notice of appeal and record on appeal had been filed in due time, the ₱60-appeal bond was filed too late.

On January 23, 1946, Fredesvindo S. Alvero filed a petition for the reconsideration of the said order dated January 17, 1946, dismissing his appeal; and said petition for

reconsideration was denied on January 29, 1946. Hence, this petition for certiorari.

On February 11, 1946, the respondents, filed their answer to the petition for certiorari, alleging (1) that said petition is defective in form as well as in substance; (2) that there has been no excusable negligence, on the part of the petitioner, or grave abuse of discretion on the part of the respondent judge, in the instant case.

As already stated, the decision rendered by the respondent judge, Hon. Mariano L. de la Rosa, was dated November 16, 1946, of which counsel for Fredesvindo S. Alvero was notified on November 28, 1945; that his motion for reconsideration and new trial was filed on December 27, 1945, and denied on January 3, 1946, and that said counsel for Alvero was notified of said order on January 7, 1946; and that he filed his notice of appeal and record on appeal the following day, to wit, January 8, 1946, and that ₱60-appeal bond was filed only on January 15, 1946.

According to the computation erroneously made by the trial court, the last day for filing and perfecting the appeal, in this case, was January 8, 1946, on which date, Fredesvindo S. Alvero should have filed his (1) notice of appeal, (2) record on appeal, and (3) appeal bond. But the ₱60-appeal bond was filed only on January 15, 1946.

Failure to perfect the appeal, within the time prescribed by the rules of court, will cause the judgment to become final, and the certification of the record on appeal thereafter, cannot restore the jurisdiction which has been lost. (Roman Catholic Bishop of Tuguegarao *vs.* Director of Lands, 34 Phil., 623; Estate of Cordoba and Zarate *vs.* Alabado, 34 Phil., 920; and Bermudez *vs.* Director of Lands, 36 Phil., 774.)

The period within which the record on appeal and appeal bond should be perfected and filed may, however, be extended by order of the court, upon application made, prior to the expiration of the original period. (Layda *vs.* Legaspi, 39 Phil., 83.)

Rules of courts, promulgated by authority of law, have the force and effect of law; and rules of court prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. (Shioji *vs.* Harvey, 43 Phil., 333.)

Strict compliance with the rules of court has been held mandatory and imperative, so that failure to pay the docket fee in the Supreme Court, within the period fixed for that purpose, will cause the dismissal of the appeal. (Salaveria *vs.* Albindo, 39 Phil., 922.) In the same manner, on fail-

ure of the appellant in a civil case to serve his brief, within the time prescribed by said rules, on motion of the appellee and notice to the appellant, or on its own motion, the court may dismiss the appeal. (Shioji *vs.* Harvey, 43 Phil., 333.)

Counsel for the petitioner Fredesvindo Alvero alleges as an excuse, for his failure to perfect and file his appeal, in due time, the illness of his wife, which ended in her death on January 10, 1946, and by which he was greatly affected.

How little, indeed, does one realize that in life he lives in the midst of death; and that every moment that passes is a step nearer towards eternity. Yet, notwithstanding the inexorable laws of human destiny, every mortal fears death, and such fear is worse than death itself. That is perhaps the reason why those feeling its approach, in their last moments, want to be surrounded by the ones dearest to their heart, to hear from them words of tenderness and eternal truth, and thus receive as balm their love and the cheering influence of the traditional faith, and the consolation of religious hope.

The virtuous and loving wife is the peculiar gift of heaven, and mother is the name for God in the innocent lips and hearts of adoring children. "She looketh well to the ways of her household, and eateth not the bread of idleness." "And her daughters arise up and call her blessed." And when she dies in the bosom of God, her children find solace in the contemplation of her eternal bliss, as mirrored in her tranquil beauty.

It is not, therefore, difficult to understand the state of mind of the attorney, and his intense devotion and ardent affection towards his dying wife.

Unfortunately, counsel for petitioner has created a difficult situation. In his motion for reconsideration and new trial, dated December 27, 1945, he did not point out specifically the findings or conclusions in the judgment, which are not supported by the evidence or which are contrary to law, making express reference to the pertinent evidence or legal provisions, as expressly required by Rule 37, section 2, paragraph (*c*) of the Rules of Court. Motions of that kind have been considered as motions *pro forma* intended merely to delay the proceeding, and, as such, they cannot and will not interrupt or suspend the period of time for the perfection of the appeal. (Valdez *vs.* Jugo, G. R. No. 48859, and Reyes *vs.* Court of Appeals, G. R. No. 48960.) Hence, the period for perfecting herein petitioner's appeal commenced from November 28, 1945, when he was notified of the judgment rendered in the case, and expired on December 28, 1945; and, therefore, his notice of appeal and record on appeal filed on January 8,

1946, were filed out of time, and much more so his appeal bond, which was only filed on January 15, 1946.

It is futile to speak of hospitals, doctors and nurses to minister alone to the needs of the sick and the dying, who are dearest to us, for our reasoning powers are of little avail when sorrow or despair rages within.

But human laws are inflexible and no personal consideration should stand in the way of performing a legal duty.

The attorney for petitioner Fredesvindo S. Alvero could have asked for an extension of time, within which to file and perfect his appeal, in the court below; but he had failed to do so, and he must bear the consequences of his act. A strict observance of the rules of court, which have been considered indispensable to the prevention of needless delays and to the orderly and speedy dispatch of judicial business, is an imperative necessity.

It may not be amiss to state in this connection that no irreparable damage has been caused to the petitioner Fredesvindo S. Alvero, as Margarita Villarica, the vendor to the two, of the land in question, has shown readiness to repair the damage done.

No showing having been made that there had been merely an excusable negligence, on the part of the attorney for petitioner Fredesvindo S. Alvero, and that there had been grave abuse of sound judicial discretion, on the part of the respondent judge, the petition for certiorari filed in this case, is, therefore, hereby dismissed, without costs. So ordered.

Moran, C. J., Ozaeta, Parás, Jaranilla, Feria, Pablo, Perfecto, Hilado, Bengzon, and *Briones, JJ.*, concur.

Petition dismissed.

[No. 48483. March 29, 1946]

PHILIPPINE MANUFACTURING COMPANY, plaintiff and appellant, *vs.* BIBIANO L. MEER, Collector of Internal Revenue, defendant and appellee.

1. TAXATION; PERCENTAGE TAX ON SALES; DERRIVATIVES, PRODUCTS AND BY-PRODUCTS DEFINED; LARD, MARGARINE AND SOAP, NOT DERIVATIVE, PRODUCT OR BY-PRODUCT OF COPRA.—The word "by-products" refers to those materials which in the cultivation or manufacture of any given commodity remain over, and which possess or can be brought to possess a market value of their own. By "derivatives" is meant anything obtained or deduced from another, or is substantially so related to another by modification or substitution, as to be regarded as theoretically derived from it even when not obtainable from it in practice; thus, the amino compounds are derivatives of ammonia. And the word "products" means a substance produced from another substance. (*See* Webster International Dictionary.) Under these definitions, the lard, margarine and soap manufactured

and sold by appellant cannot be considered as by-products of copra, because they are not the remnants of copra in the manufacture of coconut oil. Neither can they be considered as derivatives or products of copra because in fact they are manufactured from coconut oil as the basic raw material. Hence, they are subject to the three and one-half percentage tax on sales under section 186 of the Internal Revenue Code, and not to the one and one-half percentage tax under section 189 of said law.

2. ID.; ID.; SCOPE AND APPLICATION OF SECTION 189 OF INTERNAL REVENUE CODE.—It can not be maintained that lard, margarine and soap come within the application of section 189 by reason of the following phrase of said section: "when these derivatives, products, and by-products constitute sixty *per centum* or more by weight or value of the raw materials mentioned above." Appellant argues that its three products are constituted sixty-five *per centum* or more of coconut oil, and coconut oil coming entirely from copra, its products, therefore, constitute sixty-five *per centum* or more of the copra. This is a mistaken view of the law. The phrase "of the raw materials mentioned above" as applied to this case, refers to copra, as such. And, certainly, lard, margarine and soap are not constituted sixty *per centum* or more of copra, as such. Nor is copra constituted sixty *per centum* or more of lard, margarine and soap.

APPEAL from a judgment of the Court of First Instance of Manila. Jugo, J.

The facts are stated in the opinion of the court.

Ross, Selph, Carrascoso & Janda for appellant.

Solicitor-General De la Costa and *Assistant Solicitor-General Amparo* for appellee.

MORAN, *C. J.:*

In 1939, the herein appellant, Philippine Manufacturing Company, proprietor and operator of a coconut oil mill, was levied a three and one-half percentage sales tax on its sales of lard, margarine and soap during the third quarter (July to September) of 1939, by the Collector of Internal Revenue, in accordance with section 186 of Commonwealth Act No. 466 known as the Internal Revenue Code. Appellant paid the taxes levied, namely, ₱34,561.85, but under protest, claiming that it should have been levied only the one and one-half percentage tax under section 189 of the law, or the amount of ₱14,812.22. It filed a claim with appellee for the difference between the two sums, namely, ₱19,749.63, and upon denial of its claim, filed the corresponding action for recovery in the Court of First Instance of Manila. The lower court held for defendant and appellee; hence, this appeal.

The issue then: Were the lard, margarine and soap manufactured and sold by plaintiff and appellant subject to the three and one-half percentage tax on sales under sec-

tion 186 of the Internal Revenue Code, or to the one and one-half percentage tax under section 189 of said law?

Section 186 of the Internal Revenue Code reads:

"*Percentage tax on sales of other articles.*—There is levied, assessed, and collected once only on every original sale, barter, exchange, and similar transaction intended to transfer ownership of, or title to, the articles not enumerated in sections 184 and 185 a tax equivalent to three and one-half *per centum* of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importer: *Provided*, That where the articles are manufactured out of materials subject to tax under this section, the total cost of such materials as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles: *And provided, further*, That where the said articles are consigned abroad by the manufacturer or producer thereof, the shipment shall be subject to the tax established in section 187 and not to the tax imposed by this section."

This section provides for three and one-half percentage tax on sales of "other articles" which are "not enumerated in sections 184 and 185," and the articles in question are not within that enumeration.

It is maintained, however, that the case is governed by section 189 which reads:

"*Percentage tax upon proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories.*—Proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories shall pay a tax equivalent to one and one-half *per centum* of the gross value in money of all the rope, sugar, rice, coconut oil, grounded or milled corn, and desiccated coconut manufactured or milled by them, including the derivatives, products, and by-products of the raw materials from which the said articles are produced or manufactured, when these derivatives, products, and by-products constitute sixty *per centum* or more by weight or value of the raw materials mentioned above, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: *Provided, however*, That in case the raw materials are manufactured or milled in pursuance of a contract whereby the factory, central, or mill receives a share of the finished product, the tax on the share pertaining to the planter or owner of the raw materials shall be charged to the planter or owner and withheld by the proprietor or operator of the factory, central, or mill and paid by him to the Collector of Internal Revenue: *And provided, further*, That on sugar sold to the refinery mill for the production of refined sugar, 'wash-sugar,' or beet sugar, the tax shall not be paid by the central but shall be paid by the refinery mill upon local sale or consignment abroad."

"The articles in question are covered, according to appellant, by the following words of this section:

"* * * including the derivatives, products, and by-products of the raw materials from which the said articles are produced or manufactured * * *."

The words "said articles" can have no reference but to coconut oil and the other things previously mentioned in said section, and "raw materials" can have no other mean-

ing in the instant case than "copra" from which coconut oil is produced. Thus, said provision, as applied to the present case, would read: "Including the derivatives, products, and by-products of the copra from which said coconut oil is produced or manufactured."

Are lard, margarine, and soap manufactured and sold by appellant derivatives, products and by-products of copra? The word "by-products" refers to those materials which in the cultivation or manufacture of any given commodity remain over, and which possess or can be brought to possess a market value of their own. By "derivatives" is meant anything obtained or deduced from another, or is substantially so related to another by modification or substitution, as to be regarded as theoretically derived from it even when not obtainable from it in practice; thus, the amino compounds are derivatives of ammonia. And the word "products" means a substance produced from another substance. (*See* Webster International Dictionary.) Under these definitions, the lard, margarine and soap manufactured and sold by appellant cannot be considered as by-products of copra, because they are not the remnants of copra in the manufacture of coconut oil. Neither can they be considered as derivatives or products of copra because in fact they are manufactured from coconut oil as the basic raw material.

The term "derivative" or "product" can only mean the immediate derivative, or immediate product, of a next preceding object or composition, which in this case is not copra, but coconut oil. It is admitted by appellant that coconut oil must first be produced before the lard, margarine and soap can be manufactured. From the copra itself, appellant cannot manufacture these three products, though it can directly manufacture coconut oil, copra cake, or copra meal; and these, properly, are the derivatives, products and by-products of copra. From the product coconut oil, the lard, margarine and soap are made, and by such specific manufacturing processes as are proper for that purpose. Evidence of appellant shows that lard is produced after coconut oil is compressed, heated at certain temperature, mixed with some caustic soda, all to the end of refining, and to this refined composition is added some hydrogeneated fat, some cotton seed, soya bean or palm oil, and further refined, bleached and deodorized until ready for marketing. "Purico" or lard is used for frying or cooking purposes for which crude coconut oil is not fit. Margarine undergoes a more or less similar process with the modifications of churning, salting, flavoring and coloring. It is used as substitute for butter and also for frying for which coconut oil cannot be used. The soap is made

from crude coconut oil, added with some caustic soda, heated numerous times and cooled. All this goes to show that lard, margarine and soap are all manufactured from coconut oil, by specific manufacturing processes uniquely to produce these articles to be marketed for specific uses for which the base material, coconut oil as such, cannot be employed, and, therefore, they are, under section 189 of the Internal Revenue Code, the direct derivatives or products of coconut oil, and not of copra.

Proof of the intent of the law-makers to exclude the further possibility of an extensive interpretation of section 189 as suggested by appellant, is the subsequent amendment of this section deleting the words "derivatives" and "products" (*cf.* Commonwealth Act No. 503). The words "derivatives" and "products" are highly expansive, hence they must be interpreted with accuracy. A loose, unfettered interpretation would leave open a vast elastic interval between the immediate and remotest derivative or product, contracting and expanding in the interminable struggle of imposition and avoidance, between the hand that levies the tax and the hand that pays it. The questions will arise: Derivative of which? The immediate antecedent? Or the remotest antecedent? Products of which? The immediate preceding articles? Or the second, or third, or fourth preceding? Perhaps, the last preceding. Thus, rendering the taxing power either futile or overbearing.

It can not be maintained that these three articles come within the application of section 189 by reason of the following phrase of said section "when these derivatives, products, and by-products constitute sixty *per centum* or more by weight or value of the raw materials mentioned above." Appllant argues that its three products are constituted sixty-five *per centum* or more of coconut oil, and coconut oil coming entirely from copra, its products, therefore, constitute sixty-five *per centum* or more of the copra. This is a mistaken view of the law. The phrase "of the raw materials mentioned above" as applied to this case, refers to copra, as such. And, certainly, lard, margarine and soap are not constituted sixty *per centum* or more of copra, as such. Nor is copra constituted sixty *per centum* or more of lard, margarine and soap.

Furthermore, this phrase relied upon by appellant is not a test given by the law by which to determine what are and what are not the derivatives, products and by-products subject to tax under section 189. It provides merely an added requirement for the taxability of derivatives, products and by-products after they are found to be such. For it is possible that an article be truly a derivative, product, or by-product as meant by this sec-

tion and yet be constituted of less than sixty *per centum* of the raw material from which it is made, in which case the law feels that to scoop it within this section is inequitable.

And, finally, we have noticed that plaintiff in the sale of the articles in question has charged its customers the three and one-half percentage tax and it does not seem proper for said plaintiff to claim now that it should pay the government only one and one-half per cent.

Judgment is affirmed, with costs against appellant.

Parás, Jaranilla, Feria, De Joya, Pablo, Perfecto, Hilado, Bengzon, and *Briones, JJ.,* concur.

Judgment affirmed.

[No. L-131. Marzo 30, 1946]

NARCISA DE LA FUENTE y su esposo JOSÉ TEODORO, demandantes y apelados, *contra* LUIS BORROMEO, demandado y apelante.

1. DESAHUCIO; ALQUILERES; ORDEN DE "MORATORIUM."—La Ciudad de Manila ha sido liberada de la ocupación enemiga en marzo 10, 1945 (Proclama No. 6 del Presidente del Commonwealth, 41 Gac. Of., 76) y de acuerdo con la orden de *moratorium* (Orden Ejecutiva No. 25, 41 Gac. Of., 49, tal como ha sido enmendada por la Orden Ejecutiva No. 32, 41 Gac. Of., 56) sólo es exigible el pago de los alquileres desde el día 11 de marzo de 1945 y siguientes.
2. PRÁCTICA FORENSE; MOCIÓN DE TRANSFERENCIA; PRUEBA DE ENFERMEDAD; DISCRECIÓN DEL JUZGADO.—La causa de Natividad *contra* Marquez (38 Jur. Fil., 645), invocada por el apelante dice textualmente: "que no se ha probado el hecho de su enfermedad mediante una declaración jurada satisfactoria de un médico." El certificado médico que presentó el apelante no está jurado. La moción de transferencia, pues, presentada no reunía todos los requisitos que exige la Regla 31, artículo 6 y la jurisprudencia citada. Bajo estas circunstancias, no abusó de su discreción el Juzgado *a quo*, ni se le privó al demandado de su derecho de ser oído. Si no consiguió otro aplazamiento de vista fué porque no presentó un certificado médico debidamente jurado.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Díaz, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Sotto & Sotto en representación del apelante.
D. José Teodoro en representación de los apelados.

PABLO, *M.:*

Trátase de una apelación contra la sentencia del Juzgado de Primera Instancia de Manila, confirmando la del juzgado municipal, que condena al demandado a desalojar

los bajos de la casa No. 759, Calle San Sebastián, Manila, a pagar la renta mensual de ₱40 desde el 1.º de marzo, 1945, hasta que desaloje la finca, con las costas.

Las pruebas demuestran que el demandante requirió por carta en febrero 26 y marzo 23, 1945 al demandado para que desaloje la finca por dos razones: 1.ª, que necesitaba ocuparla porque su casa en que vivía en la Calle Indiana, No. 802, Malate, Manila había sido quemada en febrero 19, 1945 por las hordas japonesas, y 2.ª, por falta de pago de los alquileres correspondientes a los meses de enero a marzo. El demandado no la desocupó, ni pagó los alquileres reclamados a razón de ₱40 mensual.

El contrato de arrendamiento en este caso particular es de mes por mes y se acoje el demandante a la disposición legal de que "cesa el arrendamiento, sin necesidad de requerimiento especial, cumplido el término." (Artículo 1581, Código Civil.)

El demandante envió las dos cartas para pedir al demandado que desaloje la finca para que pueda ejercitar la acción correspondiente. (Regla 72, artículo 2.)

La Ciudad de Manila ha sido liberada de la ocupación enemiga en marzo 10, 1945 (Proclama No. 6 del Presidente del Commonwealth, 41 Gac. Of., 76) y de acuerdo con la orden de *moratorium* (Orden Ejecutiva No. 25, 41 Gac. Of., 49, tal como ha sido enmendada por la Orden Ejecutiva No. 32, 41 Gac. Of., 56) sólo es exigible el pago de los alquileres desde el día 11 de marzo de 1945 y siguientes. No se le debió condenar, pues, al demandado, a pagar los alquileres desde el 1.º sino desde el 11 de marzo de 1945.

El apelante alega que el juzgado *a quo* abusó de su discreción al denegar su moción de transferencia sometida en agosto 20, 1945, a pesar de haber presentado el certificado médico (Exhíbit 1). La causa de Natividad *contra* Marquez (38 Jur. Fil., 645), invocada por el apelante dice textualmente: "que no se ha probado el hecho de su enfermedad mediante una declaración jurada satisfactoria de un médico." El certificado médico que presentó el apelante no está jurado. La moción, pues, presentada no reunía todos los requisitos que exige la Regla 31, artículo 6 y la jurisprudencia citada.

La vista de la causa señalada para el día 16 de agosto ha sido transferida para el 20 del mismo mes, a moción del apelante de fecha 7. Otra moción de posposición con el certificado médico ya citado fué presentada en el día de la vista fijada en 20 de agosto, sin comparecer ni el demandado, ni su abogado. El juzgado denegó esta petición y procedió a oír las pruebas del demandante. Bajo estas circunstancias, no abusó de su discreción el juzgado *a quo*, ni se le privó al demandado de su derecho de ser oído. Si

no consiguió otro aplazamiento de vista fué porque no presentó un certificado médico debidamente jurado.

"La facultad para admitir o denegar mociones de aplazamientos, y resolver en cuanto a otras cuestiones relativas a la tramitación y vista de una causa en los Juzgados de Primera Instancia es cosa que queda a la sana discreción del Juez sentenciador y no se alterará lo resuelto por él sobre el particular a menos que se pruebe que ha habido abuso de discreción que ha dado por resultado la denegación de algunos de los derechos esenciales del apelante." (Castillo *contra* Sebullina, 32 Jur. Fil., 544.)

Este Tribunal tiene conocimiento de la actual crisis de viviendas. No es insensible a las palpitaciones del sentimiento público. Pero, en materia de procedimientos no puede sancionar ningún principio que sólo tenga por objeto demorar injustificadamente o frustrar los intereses de la justicia.

Se confirma la sentencia en cuanto condena al demandado a desalojar los bajos de la casa No. 759, Calle San Sebastián, Manila, y se condena al demandado a pagar el alquiler de ₱40 mensual a contar desde el día 11 de marzo de 1945, hasta que los desaloje. Sin pronunciamiento sobre costas. Así se ordena.

Parás, Jaranilla, Feria y *Briones, MM.*, están conformes.

Se modifica la sentencia.

[No. L-252. March 30, 1946]

TRANQUILINO CALO and DOROTEO SAN JOSE, petitioners, *vs.* ARSENIO C. ROLDAN, Judge of First Instance of Laguna, REGINO RELOVA and TEODULA BARTOLOME, respondents.

1. ACTIONS; WHAT DETERMINES NATURE OF.—It is a truism in legal procedure that what determines the nature of an action filed in the courts are the facts alleged in the complaint as constituting the cause of the action. The facts averred as a defense in the defendant's answer do not and can not determine or change the nature of the plaintiff's action. The theory adopted by the plaintiff in his complaint is one thing, and that of the defendant in his answer is another. The plaintiff has to establish or prove his theory or cause of action in order to obtain the remedy he prays for; and the defendant his theory, if necessary, in order to defeat the claim or action of the plaintiff.

2. ID.; NATURE OF, NOT AMENDED OR CHANGED BY PLAINTIFF'S REPLY.—The fact that plaintiffs, in their reply dated September 4, after reiterating their allegation or claim that they are the owners in fee simple and possessors in good faith of the properties in question, pray that they be declared the owners in fee simple, has not changed the nature of the action alleged in the complaint or added a new cause of action thereto; because the allegations in plaintiffs' reply were in answer to defendants' defenses, and the nature of plaintiffs' cause of action, as set forth in his complaint, was not and could not be amended or changed by the reply, which plaintiff had the

right to present as a matter of course. A plaintiff can not, after defendant's answer, amend his complaint by changing the cause of action or adding a new one without previously obtaining leave of court (section 2, Rule 17).

3. ID.; EQUITABLE ACTION TO QUIET TITLE, WHEN TO BE FILED.—An equitable action to quiet title, in order to prevent harassment by continued assertion of adverse title, or to protect the plaintiff's legal title and possession, may be filed in courts of equity (and our courts are also of equity), only where no other remedy at law exists or where the legal remedy invokable would not afford adequate remedy.

4. ID.; PROVISIONAL REMEDIES; WHEN TO BE APPLIED FOR AND GRANTED.—The provisional remedies denominated attachment, preliminary injunction, receivership, and delivery of personal property, provided in Rules 59, 60, 61 and 62 of the Rules of Court, respectively, are remedies to which parties litigant may resort for the preservation or protection of their rights or interests, and for no other purpose, during the pendency of the principal action. If an action, by its nature, does not require such protection or preservation, said remedies can not be applied for and granted. To each kind of action or actions a proper provisional remedy is provided for by law. The Rules of Court clearly specify the cases in which they may be properly granted.

5. RECEIVERSHIP; APPOINTMENT OF RECEIVER IN ACTION OF INJUNCTION; CASE AT BAR.—The respondent judge acted in excess of his jurisdiction in appointing a receiver in case No. 7951 of the Court of First Instance of Laguna. Appointment of a receiver is not proper or does not lie in an action of injunction such as the one filed by the plaintiff.

6. ID.; APPOINTMENT OF RECEIVER WHEN TITLE IS IN DISPUTE AND PROPERTY IN POSSESSION OF ONE PARTY.—Relief by way of receivership is equitable in nature, and a court of equity will not ordinarily appoint a receiver where the rights of the parties depend on the determination of adverse claims of legal title to real property and one party is in possession.

ORIGINAL ACTION in the Supreme Court. *Certiorari with Preliminary Injunction.*

The facts are stated in the opinion of the court.

Zosimo D. Tanalega for petitioners.

Estanislao A. Fernandez for respondents Relova and Bartolome.

No appearance for respondent Judge.

FERIA, *J.:*

This is a petition for a writ of certiorari against the respondent Judge Arsenio C. Roldan of the Court of First Instance of Laguna, on the ground that the latter has exceeded his jurisdiction or acted with grave abuse of discretion in appointing a receiver of certain lands and their fruits which, according to the complaint filed by the other respondents, as plaintiffs, against petitioners, as defendants, in case No. 7951, were in the actual possession of and belong to said plaintiffs.

The complaint filed by plaintiffs and respondents against defendants and petitioners in the Court of First Instance of Laguna reads as follows:

"1. That the plaintiffs and the defendants are all of legal age, Filipino citizens, and residents of Pila, Laguna; the plaintiffs are husband and wife.

"2. That the plaintiff spouses are the owners and the possessors of the following described parcels of land, to wit:

* * * * * * *

"3. That parcel No. (*a*) described above is now an unplanted rice land and parcel No. (*b*) described in the complaint is a coconut land, both under the possession of the plaintiffs.

"4. That the defendants, without any legal right whatsoever and in connivance with each other, through the use of force, stealth, threats and intimidation, intend or are intending to enter and work or harvest whatever existing fruits may now be found in the lands above-mentioned in violation of plaintiffs' proprietary rights thereto and tending to render the judgment in this case ineffectual.

"5. That unless defendants are barred, restrained, enjoined, and prohibited from entering or harvesting the lands or working therein though ex-parte injunction, the plaintiffs will suffer injustice, damages and irreparable injury to their great prejudice.

"6. That the plaintiffs are offering a bond in their application for ex-parte injunction in the amount of ₱2,000, subject to the approval of this Hon. Court, which bond is attached hereto marked as Annex A and made an integral part of this complaint.

"7. That on or about June 26, 1946, the defendants, through force, destroyed and took away the madre-cacao fences and barbed wires built on the northwestern portion of the land designated as parcel No. (*b*) of this complaint to the damage and prejudice of the plaintiffs in the amount of at least ₱200.

"Wherefore, it is respectfully prayed:

"(*a*) That the accompanying bond in the amount of ₱2,000 be approved;

"(*b*) That a writ of preliminary injunction be issued ex-parte immediately restraining, enjoining and prohibiting the defendants, their agents, servants, representatives, attorneys, and, (or) other persons acting for and in their behalf, from entering in, interfering with and/or in any wise taking any participation in the harvest of the lands belonging to the plaintiffs; or in any wise working the lands above-described;

"(*c*) That judgment be rendered, after due hearing, declaring the preliminary injunction final;

"(*d*) That defendants be condemned jointly and severally to pay the plaintiffs the sum of ₱200 as damages; and,

"(*e*) That plaintiffs be given such other and further relief just and equitable with costs of suit to the defendants."

The defendants filed an opposition dated August 8, 1945, to the issuance of the writ of preliminary injunction prayed for in the above-quoted complaint, on the ground that they are the owners of the lands and have been in actual possession thereof since the year 1925; and in their answer to the complaint filed on August 14, 1945, they reiterate that they are the owners and were then in actual pos-

session of said property, and that the plaintiffs have never been in possession thereof.

The hearing of the petition for preliminary injunction was held on August 9, 1945, at which evidence was introduced by both parties. After the hearing, Judge Rilloraza, then presiding over the Court of First Instance of Laguna, denied the petition on the ground that the defendants were in actual possession of said lands. A motion for reconsideration was filed by plaintiffs on August 20, 1945, but said motion had not yet, up to the hearing of the present case, been decided either by Judge Rilloraza, who was assigned to another court, or by the respondent judge.

The plaintiffs (respondents) filed on September 4, 1945, a reply to defendants' answer in which, among others, they reiterate their allegation in the complaint that they are possessors in good faith of the properties in question.

And on December 17, plaintiffs filed an urgent petition *ex parte* praying that plaintiffs' motion for reconsideration of the order denying their petition for preliminary injunction be granted and/or for the appointment of a receiver of the properties described in the complaint, on the ground that (*a*) the plaintiffs have an interest in the properties in question, and the fruits thereof were in danger of being lost unless a receiver was appointed; and that (*b*) the appointment of a receiver was the most convenient and feasible means of preserving, administering and/or disposing of the properties in litigation which include their fruits. Respondent Judge Roldan, on the same date, December 17, 1945, decided that the court would consider the motion for reconsideration in due time, and granted the petition for appointment of and appointed a receiver in the case.

The question to be determined in the present special civil action of certiorari is, whether or not the respondent judge acted in excess of his jurisdiction or with grave abuse of discretion in issuing the order appointing a receiver in the case No. 7951 of the Court of First Instance of Laguna; for it is evident that there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law against the said order, which is an incidental or interlocutory one.

It is a truism in legal procedure that what determines the nature of an action filed in the courts are the facts alleged in the complaint as constituting the cause of the action. The facts averred as a defense in the defendant's answer do not and can not determine or change the nature of the plaintiff's action. The theory adopted by the plaintiff in his complaint is one thing, and that of the

defendant in his answer is another. The plaintiff has to establish or prove his theory or cause of action in order to obtain the remedy he prays for; and the defendant his theory, if necessary, in order to defeat the claim or action of the plaintiff.

According to the complaint filed in the said case No. 7951, the plaintiff's action is one of ordinary injunction, for the plaintiffs allege that they are the owners of the lands therein described, and were in actual possession thereof, and that "the defendants without any legal right whatever and in connivance with each other, through the use of force, stealth, threat and intimidation, intend or are intending to enter and work or harvest whatever existing fruits may be found in the lands above mentioned in violation of plaintiffs' proprietary rights thereto;" and prays "that the defendants, their agents, servants, representatives, and other persons acting for or in their behalf, be restrained, enjoined and prohibited from entering in, interferring with, or in any way taking any participation in the harvest of the lands above described belonging to the plaintiffs."

That this is the nature of plaintiffs' action is corroborated by the fact that they petitioned in the same complaint for a preliminary prohibitory injunction, which was denied by the court in its order dated August 17, 1945, and that the plaintiffs, in their motion for reconsideration of said order filed on August 20 of the same year, and in their urgent petition dated December 17, moving the court to grant said motion for reconsideration, reiterated that they were the actual possessors of the land in question.

The fact that plaintiffs, in their reply dated September 4, after reiterating their allegation or claim that they are the owners in fee simple and possessors in good faith of the properties in question, pray that they be declared the owners in fee simple, has not changed the nature of the action alleged in the complaint or added a new cause of action thereto; because the allegations in plaintiff's reply were in answer to defendants' defenses, and the nature of plaintiff's cause of action, as set forth in his complaint, was not and could not be amended or changed by the reply, which plaintiff had the right to present as a matter of course. A plaintiff can not, after defendant's answer, amend his complaint by changing the cause of action or adding a new one without previously obtaining leave of court (section 2, Rule 17).

Respondents' contention in paragraph I of his answer that the action filed by him against petitioners in the case No. 7951 of the Court of First Instance of Laguna is not only for injunction, but also to quiet title over the two parcels of land described in the complaint, is untenable

for the reasons stated in the previous paragraph. Besides, an equitable action to quiet title, in order to prevent harassment by continued assertion of adverse title, or to protect the plaintiff's legal title and possession, may be filed in courts of equity (and our courts are also of equity), only where no other remedy at law exists or where the legal remedy invokable would not afford adequate remedy (32 Cyc., 1306, 1307). In the present case wherein plaintiffs allege that they are the owners and were in actual possession of the lands described in the complaint and their fruits, the action of injunction filed by them is the proper and adequate remedy in law, for a judgment in favor of plaintiffs would quiet their title to said lands.

The provisional remedies denominated attachment, preliminary injunction, receivership, and delivery of personal property, provided in Rules 59, 60, 61 and 62 of the Rules of Court, respectively, are remedies to which parties litigant may resort for the preservation or protection of their rights or interests, and for no other purpose, during the pendency of the principal action. If an action, by its nature, does not require such protection or preservation, said remedies can not be applied for and granted. To each kind of action or actions a proper provisional remedy is provided for by law. The Rules of Court clearly specify the cases in which they may be properly granted.

Attachment may be issued only in the cases or actions specifically stated in section 1, Rule 59, in order that the defendant may not dispose of his property attached, and thus secure the satisfaction of any judgment that may be recovered by plaintiff from defendant. For that reason a property subject of litigation between the parties, or claimed by plaintiff as his, can not be attached upon motion of the same plaintiff.

The special remedy of preliminary prohibitory injunction lies when the plaintiff's principal action is an ordinary action of injunction, that is, when the relief demanded in the plaintiff's complaint consists in restraining the commission or continuance of the act complained of, either perpetually or for a limited period, and the other conditions required by section 3 of Rule 60 are present. The purpose of this provisional remedy is to preserve the *status quo* of the things subject of the action or the relation between the parties, in order to protect the rights of the plaintiff respecting the subject of the action during the pendency of the suit. Because, otherwise or if no preliminary prohibitory injunction were issued, the defendant may, before final judgment, do or continue the doing of the act which the plaintiff asks the court to restrain, and thus make ineffectual the final judgment rendered afterwards granting the relief sought by the plaintiff. But,

as this Court has repeatedly held, a writ of preliminary injunction should not be granted to take the property out of the possession of one party to place it in the hands of another whose title has not been clearly established.

A receiver may be appointed to take charge of personal or real property which is the subject of an ordinary civil action, when it appears that the party applying for the appointment of a receiver has an interest in the property or fund which is the *subject of the action or litigation*, and that such property or fund is in danger of being lost, removed or materially injured unless a receiver is appointed to guard or preserve it [section 1(*b*), Rule 61]; or when it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering or disposing of the property *in litigation* [section 1(*e*) of said Rule]. The property or fund must, therefore, be in litigation according to the allegations of the complaint, and the object of appointing a receiver is to secure and preserve the property or thing in controversy pending the litigation. Of course, if it is not in litigation and is in the actual possession of the plaintiff, the latter can not apply for and obtain the appointment of a receiver thereof, for there would be no reason for such appointment.

Delivery of personal property as a provisional remedy consists in the delivery, by order of the court, of a personal property by the defendant to the plaintiff, who shall give a bond to assure the return thereof or the payment of damages to the defendant if the plaintiff's action to recover possession of the same property fails, in order to protect the plaintiff's right of possession of said property, or prevent the defendant from damaging, destroying or disposing of the same during the pendency of the suit.

Undoubtedly, according to law, the provisional remedy proper to plaintiffs' action of injunction is a preliminary prohibitory injunction, if plaintiffs' theory, as set forth in the complaint, that he is the owner and in actual possession of the premises is correct. But as the lower court found at the hearing of the said petition for preliminary injunction that the defendants were in possession of the lands, the lower court acted in accordance with law in denying the petition, although in their motion for reconsideration, which was still pending at the time the petition in the present case was heard in this court, plaintiffs insist that they are in actual possession of the lands and, therefore, of the fruits thereof.

From the foregoing it appears evident that the respondent judge acted in excess of his jurisdiction in appointing a receiver in case No. 7951 of the Court of First Instance of Laguna. Appointment of a receiver is not

proper or does not lie in an action of injunction such as the one filed by the plaintiff. The petition for appointment of a receiver filed by the plaintiff (Exhibit I of the petition) is based on the ground that it is the most convenient and feasible means of preserving, administering and disposing of the properties in litigation; and according to plaintiffs' theory or allegations in their complaint, neither the lands nor the palay harvested therein, are in litigation. The litigation or issue raised by plaintiffs in their complaint is not the ownership or possession of the lands and their fruits. It is whether or not defendants intend or were intending to enter or work or harvest whatever existing fruits could then be found in the lands described in the complaint, alleged to be the exclusive property and in the actual possession of the plaintiffs. It is a matter not only of law but of plain common sense that a plaintiff will not and legally can not ask for the appointment of a receiver of a property which he alleges to belong to him and to be actually in his possession. For the owner and possessor of the property is more interested than other persons in preserving and administering it.

Besides, even if the plaintiffs had amended their complaint and alleged that the lands and palay harvested therein are being claimed by the defendant, and consequently the ownership and possession thereof were in litigation, it appearing that the defendants (now petitioners) were in possession of the lands and had planted the crop or palay harvested therein, as alleged in paragraph 6(*a*) and (*b*) of the petition filed in this Court and not denied by the respondent in paragraph 2 of his answer, the respondent judge would have acted in excess of his jurisdiction or with a grave abuse of discretion in appointing a rereiver thereof. Because relief by way of receivership is equitable in nature, and a court of equity will not ordinarily appoint a receiver where the rights of the parties depend on the determination of adverse claims of legal title to real property and one party is in possession (53 C. J., 26). The present case falls within this rule.

In the case of Mendoza *vs.* Arellano, this Court said:

"Appointments of receivers of real estate in cases of this kind lie largely in the sound discretion of the court, and where the effect of such an appointment is to take real estate out of the possession of the defendant before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases and on a clear showing of necessity therefor in order to save the plaintiff from grave and irremediable loss or damage. (34 Cyc., 51, and cases there cited.) No such showing has been made in this case as would justify us in interferring with the exercise by the trial judge of his discretion in denying the application for a receiver." (36 Phil., 63, 64.)

Although the petitioner is silent on the matter, as the respondents in their answer allege that the Court of First Instance of Laguna has appointed a receiver in another case No. 7989 of said court, instituted by the respondents Relova against Roberto Calo and his brothers and sisters, children of Sofia de Oca and Tranquilino Calo (petitioner in this case), and submitted copy of the complaint filed by the plaintiffs (now respondents) in said case No. 7989 (Exhibit 9 of the respondents' answer), we may properly express and do hereby express here our opinion, in order to avoid multiplicity of suits, that as the cause of action alleged in the complaint filed by the respondents Relova in that other case is substantially the same as the cause of action averred in the complaint filed in the present case, the order of the Court of First Instance of Laguna appointing a receiver in said case No. 7989 was issued in excess of its jurisdiction, and is therefore null and void.

In view of all the foregoing, we hold that the respondent Judge Arsenio C. Roldan of the Court of First Instance of Laguna has exceeded his jurisdiction in appointing a receiver in the present case, and therefore the order of said respondent judge appointing the receiver, as well as all other orders and proceedings of the court presided over by said judge in connection with the receivership, are null and void.

As to the petitioners' petition that respondents Relova be punished for contempt of court for having disobeyed the injunction issued by this court against the respondents requiring them to desist and refrain from enforcing the order of receivership and entering into the possession of the rice lands and harvesting the palay therein, it appearing from the evidence in the record that the palay was harvested by the receiver and not by said respondents, the petition for contempt of court is denied. So ordered, with costs against the respondents.

Moran, C. J., Ozaeta, Jaranilla, De Joya, Pablo, Perfecto, Hilado, and *Bengzon, JJ.*, concur.

ERIONES, M., con quien está conforme PARÁS, *M.*, conforme:

Estoy conforme con la parte dispositiva por la única razón, breve pero lúcidamente expuesta en la ponencia, de que cuando hay controversia sobre el título de propiedad no debe utilizarse el nombramiento de depositario para perturbar el *statu quo* trasladando la posesión del terreno litigioso de una parte a otra. Solamente cuando el dominio es indisputable—verbigracia, hay de por medio un título Torrens—cabe nombrar un depositario para los fines específicos señalados por la ley, entre ellos principalmente la preservación del objeto litigioso cuando corre el peligro de dañarse o echarse a perder.

Judgment reversed.

[No. L-110. April 3, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* VALERIANO PAGKALIWAGAN and VICTORIANO PAGKALIWAGAN, defendants and appellants.

EVIDENCE; AFFIDAVITS; HEARSAY EVIDENCE; CASE AT BAR.—The rule against hearsay evidence had merely been given application by the trial court in refusing to admit Exhibits 2 and 3 which are respectively an affidavit of the Director of the Mindoro Provincial Hospital to the effect that V. P. was confined and treated for wounds on his face and head, and an affidavit of the Provincial Fiscal of Mindoro to the effect that said appellant voluntarily reported to his office for investigation with respect to the incident in question. Indeed, in order to always preserve the right of parties to crossexamine, Rule of Court 123, section 77, provides that "the testimony of witnesses shall be given orally in open court and under oath or affirmation." Said affidavits are not, as contended by counsel for the appellants, in the nature of public documents contemplated in Rule of Court 123, section 39.

APPEAL from a judgment of the Court of First Instance of Batangas. Macadaeg, J.

The facts are stated in the opinion of the court.

Teodoro R. Dominguez for appellants.

First Assistant Solicitor-General Reyes and *Solicitor Madamba* for appellee.

PARÁS, *J.:*

The defendants, Valeriano Pagkaliwagan and Victoriano Pagkaliwagan, have appealed from a judgment of the Court of First Instance of Batangas, finding them guilty of homicide and sentencing them to undergo imprisonment for an indeterminate period of from six (6) years and one (1) day, *prisión mayor*, to twelve (12) years and one (1) day, *reclusión temporal*, to indemnify jointly and severally the heirs of the deceased Teodoro Ebora in the sum of ₱2,000, and to pay the costs.

In spite of the forceful presentation of appellants' case by their counsel, we are unable to state that any prejudicial error was committed by the trial court; for the fact remains that their guilt is duly established by the direct testimony of two eyewitnesses, Leon Rayos and Delfin Garcia, who had no reason for making a false imputation. Thus, we deduce from the evidence for the prosecution, whose side has also been well expounded in the brief for the Government, that appellant Valeriano Pagkaliwagan, after embracing Teodoro Ebora—perhaps more as a strategic move than as a gesture of conciliation—abruptly took hold of his bolo and struck Teodoro Ebora on the chest, thereby inflicting a gaping wound that extended to the abdomen. This was followed by a bolo attack on the part of appellant Victoriano Pagkaliwagan who hit the rear

side of Teodoro's head after the latter had inflicted a cheek-to-cheek wound on Valeriano's face as Teodoro Ebora unsheated and swung his bolo in an attempt to make a counter offensive; and the aid of Victoriano Pagkaliwagan was ministered when he heard Valeriano's appealing complaint "Qué dolor, hermano." Unfortunately for Valeleriano Pagkaliwagan, however, he was accidentally wounded on the head by the blow of Victoriano Pagkaliwagan. Teodoro Ebora died as a consequence of the wounds successively inflicted by the appellants.

Such fatal episode was immediately preceded by a verbal altercation between Valeriano Pagkaliwagan and Teodoro Ebora that occurred at about 7 o'clock in the evening of March 16, 1945, in the barrio of San Agapito, Verde Island, Batangas, Batangas, in front of the house of the barrio lieutenant, Severo Escarez, where a group of men, all armed with bolos, were gathered for instructions on the matter of guarding their place against possible penetration by Japanese stragglers. On this occasion Teodoro Ebora (an old man) happened to ironically remark that those who merely displayed superficial bravery and would run upon sighting a Japanese, should better desist from becoming a guard. Valeriano Pagkaliwagan, one of the young men present, sharply answered that their courage might be tried by those who would not run. After further exchange of words between the two, and in an effort to pacify them, Victoriano Pagkaliwagan intervened, whereupon Valeriano Pagkaliwagan embraced Teodoro Ebora, with Teodoro's right arm being placed over Valeriano's right shoulder and the former's left arm being held by the latter's left hand which was passed behind Teodoro Ebora. At this juncture the latter called Valeriano Pagkaliwagan "hijo de p. . . ."

We have no doubt that Valeriano Pagkaliwagan was sufficiently incensed by said words, which he counteracted by the aggression already referred to above. The antagonistic attitude of Valeriano Pagkaliwagan is easily traceable to his grievance against Teodoro Ebora originating from a prior land dispute, borne out not only by his signed statement (Exhibit C), but by the fact that, although the criticism of Teodoro Ebora regarding the bravery of some young men was not particularly directed to Valeriano Pagkaliwagan, the latter was the first to take offense. Indeed, being a nephew-in-law of Teodoro Ebora, appellant Valeriano Pagkaliwagan should have kept silent and allowed someone else to oppose his uncle. The failure of the prosecution to put on the witness stand the persons who investigated Valeriano Pagkaliwagan and actually prepared Exhibit C does not weaken its probative value or make it inadmissible, since it had been identified by the barrio lieutenant and Delfin Garcia who saw its preparation, and

Valeriano Pagkaliwagan himself admitted his signature thereon. Neither is there validity in the pretense that said appellant stamped his signature without reading or knowing the contents of the document, because of his weakened condition and of his haste in leaving for Calapan, Mindoro. If Valeriano Pagkaliwagan was in fact weak, why was he able, immediately after affixing his signature, to make the trip to Calapan and, upon arrival, to still go to the municipal building, thence to the provincial fiscal, thence to the mayor, and lastly to the provincial hospital? If Valeriano Pagkaliwagan was in fact weak, why did he not ask his brother, appellant Victoriano Pagkaliwagan (who was then with him), to read the statement aloud?

Said appellant wants the Court to believe that he alone fought the deceased Teodoro Ebora. The positive testimony of Leon Rayos and Delfin Garcia to the contrary, however, is more in consonance with the natural and instinctive reaction of a man to come to the aid of his brother. Appellant Victoriano Pagkaliwagan must have felt likewise, for at the time he struck the deceased he was not yet sure that his brother did not run the risk of being licked by his adversary.

The rule against hearsay evidence had merely been given application by the trial court in refusing to admit Exhibits 2 and 3 which are respectively an affidavit of the Director of the Mindoro Provincial Hospital to the effect that Valeriano Pagkaliwagan was confined and treated for wounds on his face and head, and an affidavit of the Provincial Fiscal of Mindoro to the effect that said appellant voluntarily reported to his office for investigation with respect to the incident in question. Indeed, in order to always preserve the right of parties to crossexamine, Rule of Court 123, section 77, provides that "the testimony of witnesses shall be given orally in open court and under oath or affirmation." Said affidavits are not, as contended by counsel for the appellants, in the nature of public documents contemplated in Rule of Court 123, section 39.

The penalty meted out by the lower court is in accordance with law, appellant Valeriano Pagkaliwagan being entitled to the mitigating circumstances of provocation and voluntary surrender, as against only one aggravating circumstance (treachery) in that his attack was sudden and accomplished while his victim was in his embrace. Upon the other hand, appellant Victoriano Pagkaliwagan has in his favor the mitigating circumstance of obfuscation.

The appealed judgment is affirmed, with costs against the appellants. So ordered.

Moran, C. J., Jaranilla, Feria, Pablo, and *Briones, JJ.,* concur.

Judgment affirmed.

[CA–No. 12. April 6, 1946]

JUSTO BAPTISTA, plaintiff and appellant, *vs.* CONSUELO CASTAÑEDA, defendant and appellee

DIVORCE; FORCE AND EFFECT OF "NEW DIVORCE LAW" OF THE PHILIPPINE EXECUTIVE COMMISSION, AFTER RESTORATION OF COMMONWEALTH GOVERNMENT.—Without deciding whether the "New Divorce Law" was validly promulgated, we are prepared to say, and so hold, that even if it were it is no longer of any force and effect. (*See* opinions rendered in Peralta *vs.* Director of Prisons, 42 Off. Gaz., 198–262, and the authorities therein cited.) Under the proclamation of General MacArthur of October 23, 1944, Act No. 2710 prevails.

APPEAL from a judgment of the Court of First Instance of Ilocos Sur. Blanco, J.

The facts are stated in the opinion of the court.

Severino D. Dagdag for appellant.
No appearance for appellee.

OZAETA, *J.:*

The parties in this case, now over sixty years of age, contracted holy matrimony in Vigan, Ilocos Sur, on February 18, 1914. Since then until about the first day of March 1942 they lived together as husband and wife without any issue.

On March 25, 1943, pursuant to the authority conferred upon him by the Commander-in-Chief of the Imperial Japanese Forces in the Philippines and with the approval of the latter, the Chairman of the Philippine Executive Commission promulgated a "New Divorce Law" (Executive Order No. 141), which repealed Act No. 2710 of the Philippine Legislature and provided eleven grounds for divorce, among which were:

"9. Intentional or unjustified desertion continuously for at least one year prior to the filing of the action.

* * * * * * *

"11. Slander by deed or gross insult by one spouse against the other to such an extent as to make further living together impracticable."

Taking advantage of that law the plaintiff, Justo Baptista, commenced this action on May 21, 1943, in the Court of First Instance of Ilocos Sur to dissolve the bonds of matrimony between him and the defendant, Consuelo Castañeda, alleging the two statutory grounds above mentioned—desertion and slander by deed by the wife.

The defendant chose not to contest this suit for divorce. After hearing the evidence for the plaintiff, His Honor Manuel Blanco, trial judge, declared that the grounds alleged had not been established; that the most he could

deduce from the testimony of the plaintiff was that there was an incompatibility of character between him and his wife. Wherefore he denied the petition for divorce.

From that judgment the plaintiff has appealed and insists that this Court issue a decree of divorce.

Since this action was instituted, much water has passed under the bridge. The Japanese invaders have been driven out and the Commonwealth Government has been restored. Concommitantly with the restoration General MacArthur, as Commander-in-Chief of the Fil-American army of liberation, proclaimed and declared:

"1. That the Government of the Commonwealth of the Philippines is, subject to the supreme authority of the Government of the United States, the sole and only government having legal and valid jurisdiction over the people in areas of the Philippines free of enemy occupation and control;

"2. That the laws now existing on the statute books of the Commonwealth of the Philippines and the regulations promulgated pursuant thereto are in full force and effect and legally binding upon the people in areas of the Philippines free of enemy occupation and control; and

"3. That all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control." (Proclamation of October 23, 1944, 41 Off. Gaz., 148.)

Without deciding whether the "New Divorce Law" was validly promulgated, we are prepared to say, and so hold, that even if it were it is no longer of any force and effect. (*See* opinions rendered in Peralta *vs.* Director of Prisons, 42 Off. Gaz., 198–262, and the authorities therein cited.) Under the proclamation above-quoted Act No. 2710 prevails.

Its legal basis having vanished, this case must be dismissed, and it is so ordered.

De Joya, Perfecto, Hilado, and *Bengzon, JJ.,* concur.

Case dismissed.

[No. L–38. April 6, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* SAMUEL TAN-CHOCO Y MARCELO, defendant and appellant.

1. CRIMINAL LAW; THEFT; UNEXPLAINED POSSESSION AS EVIDENCE OF GUILT.—Unexplained possession of recently stolen property is *prima facie* evidence of guilt of the crime of theft.
2. ID.; ID.; ACCESSORY AFTER THE FACT.—A person who receives any property from another, knowing that the same had been stolen, is guilty of the crime of theft, as an accessory after the fact (*encubridor*). A person who receives any property from another, which he knows to have been stolen for the purpose of selling the same and to share in the proceeds of the sale, is guilty of the crime of theft, as an accessory after the fact.

In the same manner that a person who receives stolen property, for the purpose of concealing the same, is likewise guilty of the crime of theft, as an accessory after the fact.

3. EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.—In order to convict a person accused of a crime, on the strength of circumstantial evidence alone, it is incumbent upon the prosecution to present such circumstantial evidence, which will and must necessarily lead to the conclusion that the accused is guilty of the crime charged, beyond reasonable doubt, excluding all and each and every reasonable hypothesis consistent with his innocence.

4. ID.; FLIGHT AS EVIDENCE OF GUILT.—It has been truly said, since long ago that "the wicked fleeth, even when no man pursueth, whereas the righteous are as brave as the lion." (United States *vs.* Sarikala, 37 Phil., 486.) And it has been held that flight is evidence of guilt and of a guilty conscience. (United States *vs.* Alegado, 25 Phil., 310.)

APPEAL from a judgment of the Court of First Instance of Manila. Roxas, J.

The facts are stated in the opinion of the court.

Jose M. Santos for appellant.

First Assistant Solicitor-General Reyes and *Solicitor Lacson* for appellee.

DE JOYA, *J.:*

Defendant and appellant Samuel Tanchoco y Marcelo was accused, in the Court of First Instance of the City of Manila, of having stolen, in conspiracy with an American negro soldier, on or about April 7, 1945, United States Army goods, consisting of twenty-four (24) bales of Army fatigue suits, woolen blankets, towels, and caps, among others, of the approximate value of ₱5,346.

The American negro soldier could not be arrested, as his whereabouts could not be located, and the case was tried only with reference to the defendant and appellant in this case, at the end of which trial, he was found guilty as accessory before the fact (accomplice) and sentenced to three (3) months of *arresto mayor* and to pay the costs. Said defendant was not sentenced to pay any amount, as indemnity, as the said Army goods were totally recovered.

The defendant has appealed from the judgment of the lower court, finding him guilty of the crime charged, as accessory before the fact, and assigns several errors, all of which may be reduced to the general proposition that the evidence adduced by the prosecution at the trial of the case in the lower court, was altogether insufficient to establish his guilt of the said offense, as such accessory before the fact, beyond reasonable doubt, and that he is, therefore, entitled to a judgment of acquittal.

At the trial, the following facts were satisfactorily and sufficiently established:

That on April 6, 1945, herein defendant and appellant contacted witness Deogracias Gutierrez, at the latter's house in the district of Caloocan, City of Manila, and made arrangements with him to deposit in his house certain goods and merchandise for compensation; that the following day, April 7, 1945, at about 7:30 o'clock in the evening, defendant and appellant came with a child in a United States Army truck, driven by an American negro soldier, which was loaded with the twenty-four (24) bales of United States Army goods, consisting of Army fatigue suits and woolen blankets, among others, of the approximate value of ₱5,346, and started to unload them, with the help of laborers called by herein defendant and appellant, in front of the house of said witness Deogracias Gutierrez; that when said American negro soldier and herein defendant and appellant were supervising the unloading of the twenty-four (24) bales of United States Army goods, an American soldier arrived riding on a motorcycle, near the place where the said United States Army goods were being unloaded, and the negro soldier and herein defendant and appellant with the child (started to run and left the place; that as the American soldier, riding on a motorcycle, came to that place apparently for the purpose of visiting some friends, the American negro soldier returned alone and continued the unloading of said United States Army goods and left them on the ground floor of said house of witness Deogracias Gutierrez; that Deogracias Gutierrez notified a neighbor named Kosca, a guerrilla captain, suspecting that said Army goods were stolen property, and Captain Kosca, in turn, reported the matter to the police in Caloocan, and at about 10:30 o'clock that same night, Lieutenant Santos of the Caloocan police, came and seized the said Army goods and turned them over to the Provost Marshal; that patrolman Nibungco went to the house of the accused to place him under arrest, but not finding him at home, said policeman took a sister of herein defendant and appellant to the police station, for investigation, and herein appellant presented himself afterwards.

The American negro soldier could not be arrested as he had left the place, when the police arrived.

Herein defendant and appellant, when questioned about the said Army goods, stated that he happened to be in said truck, driven by the American negro soldier, and loaded with certain Army goods, as he had been asked by said negro soldier to look for a place where said goods could be deposited, promising to pay him some compensation; that he did not know that the said goods were stolen property; that the house of Gutierrez was only about 400 meters from the Caloocan Police Station; that it was near

the house of patrolman Bustamante of the Manila Police; that he had not run away; and that he suspected the illegitimate source of the Army goods in question only after they had been seized by the police. This explanation of herein defendant and appellant is too flimsy to constitute a valid or legal defense.

All of the said Army goods were ordered returned to the United States Army, in the decision rendered by the trial court.

Unexplained possession of recently stolen property is *prima facie* evidence of guilt of the crime of theft (United States *vs.* Calimbang, 35 Phil., 367; United States *vs.* Ungal, 37 Phil., 835); and this would be the case of the American negro soldier, if he had been arrested; as he had access to the goods in question. Herein defendant and appellant had no such access; and there is no evidence that he had induced anyone to steal said Army goods.

A person who receives any property from another, knowing that the same had been stolen, is guilty of the crime of theft, as an accessory after the fact (*encubridor*). (*Sentencia del Tribunal Supremo de España, de fecha 27 de junio de 1882, 2 Viada, 5ª ed. (1926), pág. 466; sentencia del Tribunal Supremo de España, de fecha 27 de diciembre de 1887, idem., pág. 467; sentencia del Tribunal Supremo de España, de fecha 14 de noviembre de 1888; idem., págs. 468–469;* United States *vs.* Montaño, 3 Phil., 310.)

A person who receives any property from another, which he knows to have been stolen, for the purpose of selling the same and to share in the proceeds of the sale, is guilty of the crime of theft, as an accessory after the fact. (United States *vs.* Galangco, 11 Phil., 575.) In the same manner that a person who receives stolen property, for the purpose of concealing the same, is likewise guilty of the crime of theft, as an accessory after the fact. (United States *vs.* Villaluz, 32 Phil., 376.)

No direct evidence has been presented in this case to show that the Army goods mentioned above had been stolen by herein defendant and appellant and by said American negro soldier, or by the latter alone.

With reference to herein defendant and appellant, the evidence presented by the prosecution, is purely circumstantial evidence.

In order to convict a person accused of a crime, on the strength of circumstancial evidence alone, it is incumbent upon the prosecution to present such circumstantial evidence, which will and must necessarily lead to the conclusion that the accused is guilty of the crime charged, beyond reasonable doubt, excluding all and each and every hypothesis consistent with his innocence. (United States *vs.*

Cajayon, 2 Phil., 579; United States *vs.* Tan Chian, 17 Phil., 209; United States *vs.* Lavente, 18 Phil., 439).

Tested by the rule stated above, considering the large amount of the Army goods in question and the conduct of said American negro soldier and herein defendant and appellant, when the American soldier, riding on a motorcycle, arrived at the place where said goods were being unloaded, the two having started to run and left the place, abandoning said Army goods as well as the truck, and their failure to claim the goods afterwards, it is evident that the goods in question were stolen property, and that said American negro soldier and herein defendant and appellant knew that said goods were really stolen property.

It has been truly said, since long ago that "the wicked fleeth, even when no man pursueth, whereas the righteous are as brave as the lion." (United States *vs.* Sarikala, 37 Phil., 486.) And it has been held that flight is evidence of guilt and of a guilty conscience. (United States *vs.* Alegado, 25 Phil., 310.)

The contention of the prosecution that herein defendant and appellant should be found guilty of the crime of theft, as accessory before the fact (accomplice) is untenable.

Considering that the evidence adduced at the trial of this case in the court below has fully established the guilt of herein defendant and appellant Samuel Tanchoco y Marcelo of the crime of theft, as accessory after the fact, beyond reasonable doubt; the judgment appealed from is modified, and, in accordance with the provisions of article 309, paragraph 3, of the Revised Penal Code, in connection with article 53 thereof, defendant and appellant is hereby sentenced to one (1) month and one (1) day of *arresto mayor*, to the accessory penalties prescribed by law, and to pay the costs. Defendant and appellant shall be given the benefit of one-half (½) of the preventive imprisonment, if any, suffered by him. With this modification, the decision appealed from is hereby affirmed with costs. So ordered.

Ozaeta, Hilado, and *Bengzon, JJ.*, concur.

PERFECTO, *J.*, dissenting:

Deogracias Gutierrez testified that on Friday, either the 6th or 7th of April, 1945, Angel Galvez, after introducing him to the accused, asked him (the witness) if he would allow the accused to use the lower part of his house to deposit something for a gratification. Gutierrez agreed, and on Saturday, that is, the day following, the accused and a boy arrived in a truck of the United States Army which was driven by a colored man. Several bales of goods in the truck were unloaded and put inside Gutierrez's house

by the accused and many other persons he called to help him carry the goods. After unloading one-half, an American arrived on a motorcycle and the negro driver and the accused disappeared. The American stopped for a while in a place where he was courting a girl and then left. The Negro appeared again and continued the unloading of the remaining bales. Witness did not see again the accused until the investigation of this case in the municipal court. In another part of his testimony, Gutierrez said that the negro was the one who unloaded all the goods, after which he left. Witness reported the matter to Manuel Kosca, a guerrilla captain, in view of the bad impression he had due to the disappearance of the accused and the negro when the American arrived on a motorcycle. Witness had no idea as to the contents of the bundles because they were closed.

Darfrente Nebungco, patrolman of Manila, testifying for the prosecution, declared that the goods were United States Army clothes because "that is what our precinct commander told me." (T. s. n., p. 11.) The commander was not called to testify.

Mamerto Santos, a lieutenant of the Manila Police Department, testifying also for the prosecution, said that the twenty-four (24) bales which were confiscated in the house of Gutierrez were "G. I. goods." (T. s. n., p. 52.)

Upon petition of defense counsel for a reinvestigation of the case when the same was called for hearing in the lower court, the following proceeding took place:

"FISCAL: The goods were found in the possession of the accused and the amount and kind of the goods demonstrate that they *must have been stolen* from the Army. *It is a presumption.*

"Even if the reinvestigation is made the result will be the same.

"COURT: You must establish the fact that those goods were stolen. *You can not presume that.*

"FISCAL: *That we can not show, because we do not know where they were taken.*

"But it is a fact that because of the quantity, a truckload, and because the goods were very new *we presume from that fact that the negro must have stolen them from somewhere.*

"COURT: I think that the *corpus delicti* can not be presumed, Mr. Fiscal. That is, that the fact must be proven, that the goods were stolen and that the possession is a *prima facie* evidence that he stole them.

"FISCAL: *That is the only evidence the prosecution has,* if Your Honor please, and there is no use reinvestigating the case." (Italics supplied.) (T. s. n., pp. 2, 3, 4.)

The accused testified that: "While I was standing near the mango tree, near a barber shop, a negro parked his truck in front of me and he came to me and said 'Hello,' and asked me whether I can find a place where there were business women and I said I did not know. Then after

the conversation, he gave his name to me as Milly, and I also gave my name to him. After that he told me that he would be going there tomorrow at the same time." The next day at the same time "he told me whether I can find a space where he could put his goods * * * and I said, 'yes' because I lived in Caloocan since February and I said in the house of Gloria Caballero, and then he told me that he would go back the following day." The following day the negro came back with bags of cloth and was accompanied by the accused to the house of Deogracias Gutierrez. "He told me to call persons to unload the truck and the people began to approach us and I told them to unload the goods and the negro would give something for the unloading." The accused did not help in the unloading. His only part was to tell the negro where to deposit the goods. During the unloading "I was standing by the mango tree * * * When the truck was about half loaded, I went home to eat my supper; it was about 7 o'clock." (T. s. n., pp. 45 to 48.) The negro promised to give something to the accused for the trouble of finding a house in which to deposit the goods. (T. s. n., pp. 54, 55.) But the accused did not receive anything nor did he profit by the goods deposited in the house of Gutierrez. (T. s. n., p. 57.) The accused denies the statement of Gutierrez to the effect that he disappeared. "He can not tell that because he was outside the house when I went home." (T. s. n., p. 57.)

The evidence in this case does not disclose that the goods in question were stolen. There is no evidence of their origin and of their ownership. Darfrente Nebungco declared that the goods were United States Army clothes because "that is what our precinct commander told me", and Lieutenant Mamerto Santos described the goods simply as "G. I. goods." Outside of the testimony of these two witnesses for the prosecution, there is absolutely no evidence as to where the goods came from and who is their owner. Nebungco's testimony, besides being merely descriptive, is hearsay. So was the declaration of Santos equally merely descriptive. That the goods were United States Army clothes, or G. I. goods, cannot give rise to the presumption that they were stolen. In the first place, they were brought in an army truck driven by a negro who, under the circumstances, although not specifically proved, was a soldier of the United States Army, it appearing that he was in uniform. If the goods were army goods and were in the possession of any army man, they cannot be supposed to have been stolen in the absence of any evidence to show it as, in the nature of things, army goods should be in the possession of army men. There is absolute-

ly no evidence that they had ever been in the possession of the accused, although there is contradicting testimony as to whether the accused was among the many persons who helped the negro in unloading the bales from the truck to the house of Gutierrez. In the second place, it is a common experience in the liberated areas of the Philippines, specially during the first months of the liberation, to see many United States Army goods being freely given away by officers and men of said army in their generous effort to help relieve the Filipino civilian population from want and destitution as a result of the enemy occupation.

That there is absolutely no evidence to show that the goods in question were stolen, is expressly admitted by the then Fiscal, now Judge of First Instance, Gregorio Narvasa himself when, urged by the lower court to establish the fact that the goods were stolen, in all honesty and fairness, he answered categorically: "That we can not show, because we do not know where they were taken" (t. s. n., p. 3), adding that if the prosecution maintains that they were stolen goods, it does so only as a mere "presumption." The negro who brought the goods in an army truck from we do not know where, and who sought the house of Gutierrez to deposit them, appears not to have been investigated, arrested, accused or, otherwise, molested for said goods, and such fact is incompatible with the illegal exportation gratuitously presumed by the prosecution.

The least that can be said is that the prosecution did not prove beyond all reasonable doubt that the goods in question were stolen, one of the substantial elements of the offense charged in the information.

At any rate, the most that can be taken against the accused is his attitude, if we have to believe Gutierrez's contradicted testimony, regarding his alleged disappearance with the negro driver at the time the American on a motorcycle appeared in the scene. By such attitude, if we acknowledge it as an established fact, it might be shown that it was only then that he came to know that something was wrong when he saw the negro absconding; and that, impelled by the urge of self-protection, he also left the place so as to avoid shouldering the responsibility which properly belonged to the negro driver. And to show that he did not want to be involved in a transaction which, by the negro's attitude, appeared wrong or at least dubious, he did not show up again in the place, Gutierrez himself declaring that the next time he saw the accused was when this case was being investigated in the municipal court. In the normal course of human affairs, as shown by experience, such attitude is the one which an

innocent man would naturally adopt under the circumstances.

In view of the foregoing, we vote that the appealed decision be revoked and the accused absolved from the offense charged in the information, with costs *de oficio*.

Judgment modified.

[No. L-119. April 10, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELECIO GONZALES ET AL., defendants. MELECIO GONZALES, appellant.

1. CRIMINAL LAW; EVIDENCE; LACK OF IMPROPER MOTIVE ON PART OF WITNESSES FOR PROSECUTION.—No competent evidence has been presented to show why the witnesses for the prosecution should testify falsely against the defendant and appellant in this case. The absence of all evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive existed, and that their testimony is worthy of full faith and credit.
2. ID.; ID.; CONFLICTING TESTIMONY; POSITIVE TESTIMONY GIVEN MORE WEIGHT THAN DENIALS.—It must have been noted that the declarations given by the principal witnesses for the prosecution and the defense are contradictory; but, in the opinion of the court, in weighing contradictory declarations and statements, greater weight must generally be given to the positive testimony of the witnesses for the prosecution than to the denials of the defendant.
3. ID.; PREMEDITATION, WHEN TO BE CONSIDERED; CASE AT BAR.—The qualifying circumstance of premeditation can be satisfactorily established only if it could be proved that the defendant had ample and sufficient time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and reflection, following his plan to commit the crime. In other words, the qualifying circumstance of premeditation can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. But when the determination to commit the crime was immediately followed by execution, the circumstance of premeditation cannot be legally considered. As the shooting in this case was immediately preceded by a heated discussion between the accused and the deceased, the qualifying circumstance of premeditation cannot be properly considered.
4. ID.; TREACHERY; SUDDENNESS OF ATTACK; SHOOTING PRECEDED BY HEATED DISCUSSION.—It is further claimed that, in the commission of the crime charged, the aggravating circumstance of treachery concurs, because of the suddenness of the attack. But for the same reason that the shooting was preceded by a heated discussion between the two, it must have placed the deceased on his guard, and the alleged treachery, whether as a qualifying or an aggravating circumstance, cannot be legally considered.

APPEAL from a judgment of the Court of First Instance of Batangas. Macadaeg, J.

The facts are stated in the opinion of the court.

Procopio S. Espiritu for appellant.

Assistant Solicitor-General Cañizares and *Acting Solicitor Tomacruz* for appellee.

DE JOYA, *J.:*

The defendant and appellant Meleçio Gonzales, with five others, was accused in the Court of First Instance of Batangas, of the crime of murder, with the qualifying circumstance of evident premeditation and the aggravating circumstances of treachery and that the offense was committed in the house of the victim, Esteban Briones, in the barrio of Pinagkawitan, municipality of Lipa, Batangas, in the morning of April 28, 1945.

Before the trial was commenced in the court below, the case was dismissed with reference to the other five accused, on motion of the prosecution, on the ground of insufficiency of the evidence; and, consequently, the case was tried only with reference to said defendant Melecio Gonzales.

At the trial of the case, several witnesses were called for the prosecution, including Jose Mision and Felisa Briones, who were at the time in the house of the deceased, and Benito Cueto, one of the five who had been originally accused with herein defendant, and afterwards discharged, on motion of the prosecution, as already stated above.

The defense presented also several witnesses, including Lieut.-Col. Felino Paran of the Marking Guerrilla, in the municipality of Lipa, Province of Batangas; but none of the five who had been included in the information, and who were among the most loyal soldiers and followers of herein defendant, as a guerrilla officer, according to himself.

After the trial, herein defendant Melecio Gonzales was found guilty of the crime of homicide, with an aggravating circumstance, in that the offense was committed in the dwelling of the deceased, and sentenced to the indeterminate penalty of ten (10) years and one (1) day of *prisión mayor* as minimum to seventeen (17) years, four (4) months, and one (1) day of *reclusión temporal* as maximum, with the accessory penalties provided by law, to indemnify the heirs of the deceased in the amount of ₱2,000, and to pay the costs.

From the judgment of conviction, the defendant has appealed to this Court, assigning several errors, which may be reduced principally to the following: (1) That defendant and appellant had merely acted in self-defense; and (2) that the evidence adduced by the prosecution was ut-

terly insufficient to establish his guilt for the crime of homicide, beyond reasonable doubt, and that he is, therefore, entitled to a judgment of acquittal.

The evidence adduced at the trial of the case in the court below has fully and satisfactorily established the following facts:

That prior to April 28, 1945, one Dionisio Lanto claimed to have lost four cows, which were allegedly found in the possession of the deceased Esteban Briones by Eugenio Laygo, a witness for the defense, and the deceased was naturally suspected as author of the crime; that Eugenio Laygo pleaded with Esteban Briones for the return of the cows, alleging that they were the only source of livelihood of his grandfather, Dionisio Lanto, but Esteban Briones answered, stating that he could not make the return of said cows, as they had escaped from the place where he had tied them; that Eugenio Laygo, grandson of Dionisio Lanto, owner of said cows, reported the matter to herein defendant and appellant, as a guerrilla officer to secure the latter's help; that herein defendant and appellant, believing that it was his duty to help and intervene in this matter, went to investigate the deceased Esteban Briones, to demand the return of said cows; but Briones refused to give up the cows in question; and so the matter was reported to his immediate superior, Lieut.-Col. Felino Paran, who instructed herein defendant and appellant to summon Esteban Briones, for questioning, but Esteban Briones refused to go to the headquarters of the defendant and appellant, and to submit to the guerrilla authorities; that defendant and appellant informed Lieut.-Col. Paran of Esteban Briones' attitude, and to assert his authority, Lieut.-Col. Paran issued an order of arrest, in the name of the United States Government, in the form of a letter addressed to Esteban Briones, for his apprehension; that armed with said letter or order of arrest, early in the morning of April 28, 1945, herein defendant and appellant, accompanied by five of his men, three of whom were armed, went to the house of the deceased, in the barrio of Pinagkawitan, municipality of Lipa, Province of Batangas, for the purpose of arresting the deceased; that the said five men, accompanying herein defendant and appellant, were among his most trusted and loyal men, according to the accused himself; that defendant and appellant entered the house of the deceased, accompanied by two of his men, Florentino Castillo and Victor Latag, who were not armed, while the other three men carrying weapons, namely, Benito Cueto, Fristo Mauhay and Leon Villapando, remained downstairs on guard; that at the time herein defendant and appellant and his companions entered the house of the deceased, there

were two other persons inside the house, namely, Jose Mision and Felisa Briones, sister of the deceased; that defendant and appellant, armed with said letter or order of arrest from his chief (Exhibit 3), ordered the deceased to go with him to their headquarters for questioning; that claiming that he did not understand said order of arrest written in English, the deceased refused to go with defendant and appellant, who then became so enraged that he shot the deceased Esteban Briones three times, with his revolver (Exhibit B), wounding the latter on the left arm and on the left chest, killing Esteban instantly; that immediately after the shooting and killing, defendant and appellant left the house with his companions, who started blaming him for what he had done, and whom he answered, stating that, as the deceased had refused to go with him, notwithstanding said order of arrest, and not knowing what else to do, he shot and killed him.

Defendant and appellant claims that he found it necessary to fire, with his revolver, three successive shots upon the deceased, as the latter had attempted to resist arrest and tried to pull his own revolver, for the purpose of attacking defendant and appellant.

An examination of the evidence presented in this case fails to support and justify such contention of herein defendant and appellant. The two other persons in the house, Jose Mision and Felisa Briones, have testified in a positive and categorical manner that herein defendant and appellant, enraged by the refusal of the deceased to go with him, after a brief exchange of strong language, pulled his revolver and fired at the deceased three times successively, while the latter was absolutely defenseless, as he had no weapon of any kind whatsoever in his hand at the time. The declarations of the two witnesses in the house of the deceased were fully corroborated by the testimony of Benito Cueto and Victor Latag, two of the five companions of herein defendant and appellant, on the day of the fatal shooting. The fact that herein defendant and appellant fired at the deceased, who was unarmed at the time, is further corroborated by the fact that herein defendant and appellant had failed to call as his witnesses any of his five companions, who were with him at the time, and who, according to the defendant and appellant himself, were among his most loyal and faithful soldiers and followers.

No competent evidence has been presented to show why the witnesses for the prosecution should testify falsely against the defendant and appellant in this case. The absence of all evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends

to sustain the conclusion that no such improper motive existed, and that their testimony is worthy of full faith and credit. (United States *vs.* Pajarillo, 19 Phil., 288; People *vs.* De Otero, 51 Phil., 202.)

The claim of the defendant and appellant that the deceased had a revolver was mentioned for the first time by him to the authorities, when he testified in his own behalf in the court below. When the case was investigated, defendant and appellant's own revolver, marked as (Exhibit B), for the defense, was immediately surrendered to the chief of police of Lipa, Batangas, but the alleged revolver of the deceased, which has been marked as (Exhibit 4), also for the defense, was presented to the court by Lieut.-Col. Felino Paran, defendant and appellant's superior officer, only on the day of the trial, which is conclusive evidence that said defense of the accused was an afterthought and but of recent fabrication. The testimony of Apolinario Masongsong and Lieut.-Col. Felino Paran is not of much value in this case. The alleged self-defense, put up by the defendant, is, therefore, absolutely untenable.

It must have been noted that the declarations given by the principal witnesses for the prosecution and the defense are contradictory; but, in the opinion of the Court, in weighing contradictory declarations and statements, greater weight must generally be given to the positive testimony of the witnesses for the prosecution than to the denials of the defendant. (United States *vs.* Bueno, 41 Phil., 447.)

As already stated, in the information filed against the accused, he was charged with the crime of murder, with the qualifying circumstance of premeditation. The qualifying circumstance of premeditation can be satisfactorily established only if it could be proved that the defendant had ample and sufficient time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and reflection, following his plan to commit the crime. (United States *vs.* Abaigar, 2 Phil., 417; United States *vs.* Gil, 13 Phil., 531.) In other words, the qualifying circumstance of premeditation can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. (United States *vs.* Cunanan, 37 Phil., 777.) But when the determination to commit the crime was immediately followed by execution, the circumstance of premeditation cannot be legally considered. (United States *vs.* Blanco, 18 Phil., 206.) As the shooting in this case was immediately preceded by a heated discussion between the accused and the deceased, the quali-

fying circumstance of premeditation cannot be properly considered.

It is further claimed that, in the commission of the crime charged, the aggravating circumstance of treachery concurs, because of the suddenness of the attack. (United States *vs.* Cabiling, 7 Phil., 479; United States *vs.* Baluyot, 40 Phil., 358.) But for the same reason that the shooting was preceded by a heated discussion between the two, it must have placed the deceased on his guard, and the alleged treachery, whether as a qualifying or an aggravating circumstance, cannot be legally considered.

But it is an admitted fact that the deceased was shot and killed, in his own house, where he had every reason to believe and expect that he would be completely safe; and for the violation of the sanctity of the home of the deceased by the defendant in this case, it can be properly and legally considered as an aggravating circumstance; with no mitigating circumstance to compensate.

The defendant and appellant had absolutely no right to take the law into his own hands; and when he did so, as in this case, he acted at his own peril.

At the time of the commission of the crime in this case, the liberation of the Province of Batangas, was almost complete; and herein defendant and appellant, although claiming to exercise police authority, as a guerrilla officer, had absolutely no right to pass judgment upon the deceased and to shoot him to death. It was a simple case of display and needless use of brutal force, where anarchy practically reigned supreme. In a much-vaunted democracy, such display and use of brutal force and terrorism, cannot, and must not, be tolerated; and those resorting to such violence, shall be held strictly responsible for the acts committed by them.

The crime of homicide imputed to the defendant and appellant, with the aggravating circumstance that it was committed in the dwelling of the deceased, having been sufficiently established, beyond reasonable doubt, and the penalty imposed upon the herein defendant and appellant being in accordance with law; the judgment appealed from is hereby affirmed. The defendant and appellant is, therefore, sentenced to the indeterminate penalty of ten (10) years and one (1) day of *prisión mayor* as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusión temporal* as maximum, and to the accessory penalties prescribed by law; and to indemnify the heirs of the deceased in the sum of ₱2,000, and to pay the costs. So ordered.

Ozaeta, Perfecto, Hilado, and *Bengzon, JJ.,* concur.

Judgment affirmed.

[No. L-99. April 12, 1946]

SUSANO AMOR, plaintiff and appellee, *vs.* ELIZABETH KRUMMER, JOSE CHE KUAK and FRANCISCO GONZALEZ, defendants and appellants.

EJECTMENT; JURISDICTION OF MUNICIPAL COURT AND COURT OF FIRST INSTANCE; LACK OF OBJECTION TO JURISDICTION; TRIAL ON THE MERITS IN THE COURT OF FIRST INSTANCE.—A case tried by an inferior court without jurisdiction over the subject-matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction.

APPEAL from a judgment of the Court of First Instance of Manila. Diaz, J.

The facts are stated in the opinion of the court.

Ricardo Gonzalez Lloret for appellants.
Jose Belmonte for appellees.

HILADO, *J.:*

This is an appeal from the judgment of the Court of First Instance of Manila, Branch III, in civil case No. 70518 thereof, whereby said court declared defendants Elizabeth Krummer, Jose Che Kuak and Francisco Gonzalez without right to occupy the premises designated as No. 2050 (ground floor), Rizal Avenue, Manila, and ordered them to restore the possession thereof to plaintiff Susano Amor; ordered defendant Elizabeth Krummer and Jose Che Kuak to pay ₱140 a month from March, 1945 till complete restitution of possession to plaintiff, as "rents" (which sum would be more properly denominated the reasonable value of the use and occupation of the premises per month in view of the absence of a contract of lease between the parties), with legal interest, without prejudice to the right of said defendants to recover from their co-defendant Francisco Gonzalez the "rents" which they had paid him for said premises; ordered the said Francisco Gonzalez to abstain from meddling with the possession and disposition of said premises; and ordered all the defendants to pay the costs in the municipal court, from which the case had been appealed to said Court of First Instance, and in the latter court.

The case was for ejectment originally filed with the municipal court of Manila. When it was brought on appeal to the Court of First Instance, only one of the defendants, Francisco Gonzalez, answered the complaint, the other defendants Krummer and Che Kuak having been in due time declared in default, which default the Court of First Instance refused to lift despite the petition of Atty. Ri-

cardo Gonzalez Lloret, who appeared for the defendants, asking for the lifting of said default, alleging that defendants Krummer and Che Kuak were unable to find their original attorney and had just entrusted him with the case. The court denied the petition for the reason that the ground alleged was at variance with the fact that Atty. Gonzalez Lloret in the notice of appeal appeared as attorney for all the defendants.

The evidence establishes the following facts: that plaintiff is the owner of the premises in question; that in or about March, 1945, plaintiff discovered that defendants Krummer and Che Kuak, without his knowledge nor consent, had leased the said premises from their co-defendant Francisco Gonzalez, for the monthly "rent of ₱900," without said Gonzalez possessing any authority from plaintiff either to rent the premises or to collect the rents thereof; that despite plaintiff's notice to vacate served on said defendants Krummer and Che Kuak by plaintiff on March 1, and the latter's demand for the payment of "rents," they have refused and continue to refuse to do so.

Defendant Francisco Gonzalez adduced no evidence. But the Court of First Instance considered excessive the "rent" of ₱900 a month and appraised at ₱140 a month the reasonable value of the use and occupation of the premises.

Upon the above facts said court rendered the judgment already mentioned at the beginning of this decision. The contention of counsel for appellant Francisco Gonzalez in his first assignment of error that the municipal court lacked original jurisdiction, and the Court of First Instance appellate jurisdiction, over the case because the cause of action, according to him, accrued more than one year prior to the commencement of the suit in the municipal court, is untenable. This point was not raised either in the municipal court or in the Court of First Instance. On the contrary, both parties filed their respective pleadings and proceeded with the trial of the case on the merits in the Court of First Instance without any objection to said court's jurisdiction, the contention having been advanced for the first time on this appeal. The cause of action in this case, as established by the evidence, accrued much less than one year before the suit was brought in the municipal court.

Anyway, however, even in case of lack of jurisdiction over the subject-matter on the part of an inferior court (such as the municipal court of Manila), under such circumstances as obtain in this case , Rule 40, section 11, provides:

"*Lack of jurisdiction.*—A case tried by an inferior court without jurisdiction over the subject-matter shall be dismissed on appeal by the Court of First Instance. *But instead of dismissing the case,*

the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction." (Italics supplied.)

Finding the judgment appealed from in accordance with the facts and the law, we affirm the same with the costs in the three instances against the defendants. So ordered.

Ozaeta, De Joya, Perfecto, and *Bengzon, JJ.,* concur.

Judgment affirmed.

[No. L-91. April 12, 1946]

SUSANO AMOR, plaintiff and appellee, *vs.* FRANCISCO GONZALEZ, defendant and appellant

EJECTMENT; JURISDICTION OF MUNICIPAL COURT AND COURT OF FIRST INSTANCE; LACK OF OBJECTION TO JURISDICTION; TRIAL ON THE MERITS IN THE COURT OF FIRST INSTANCE.—A case tried by an inferior court without jurisdiction over the subject-matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction.

APPEAL from a judgment of the Court of First Instance of Manila. Diaz, J.

The facts are stated in the opinion of the court.

Ricardo Gonzalez Lloret for appellant.
Jose Belmonte for appellee.

HILADO, *J.:*

In civil case No. 70519 of the Court of First Instance of Manila, Branch II, which involved an appeal from a judgment rendered by the municipal court of the same city, Susano Amor was plaintiff and appellee, and Francisco Gonzalez defendant and appellant. The controversy concerned the premises known as No. 2248, Rizal Avenue (second floor). Having failed to file his answer within the prescribed time, said defendant was declared in default by the Court of First Instance; but the order of default was lifted on the day of the hearing with the plaintiff's conformity.

The evidence fully establishes the following facts, as to the plaintiff's first cause of action:

That around the month of March, 1944, the plaintiff, owner of the premises in controversy, secured a judgment against one Rosario Lozano ejecting the latter from the said premises; that the plaintiff was unable to take possession of the said premises because the defendant, without his knowledge and consent, entered the premises and since

then had been occupying the same; that despite the plaintiff's repeated demands for the surrender of the possession of the aforesaid premises he had been unsuccessful in his efforts prior to the institution of his action in the municipal court; and that the defendant has failed to pay the reasonable "rents" (they should more properly be called the reasonable monthly value of the use and occupation of the premises due to the absence of a contract of lease between the parties) of ₱40 a month since the 16th of March, 1944.

With regard to the plaintiff's second cause of action, he has sufficiently proven: that the defendant had before the filing of the original suit been occupying the premises known as the second floor of No. 2250, Rizal Avenue, of which the plaintiff is the owner; that because he lost the house which he was using for residence, the plaintiff asked the defendant to vacate the premises here in question, but the defendant refused to do so; and that when the judgment appealed from was rendered on August 2, 1945 the defendant was in arrears in the payment of rents (₱40 a month) since July 16, 1943.

As stated by the Court of First Instance, the defendant's defense consists in that the plaintiff is a person of means; that he has various houses in the City of Manila and that, therefore, he is not in need of the premises in question, his needs being very much less than those of the defendant. As to this defense the court well said that while it sympathized with the defendant and would wish to help him, "in the adjudication of the case, its course can only be determined by the evidence on record, and the evidence favors the plaintiff." Said court, therefore, rendered judgment, ordering the defendant to vacate the premises known as the second floor of houses Nos. 2248 and 2250, Rizal Avenue, and to deliver the possession thereof to the plaintiff; to pay the "rents" at the rate of ₱40 a month beginning March 11, 1945, for the second floor of house No. 2248, and at the same rate for the second floor of house No. 2250, the "rents" to be paid until the defendant vacates the premises.

Counsel for appellant Francisco Gonzalez has filed a single brief in the instant case and in cases G. R. Nos. L-90 and L-223, and in the first assignment of error in said brief he assails the original jurisdiction of the municipal court and the appellate jurisdiction of the Court of First Instance over this case as well as in the other two, basing his objection upon the allegation that the cause of action accrued more than one year prior to the commencement of the original suit. This contention is untenable. The point was not raised either in the municipal court or in the

Court of First Instance. On the contrary, both parties filed their respective pleadings and proceeded with the trial of the instant case on the merits in the Court of First Instance without any objection to said court's jurisdiction, the contention having been advanced for the first time on this appeal. The causes of action in this case, as established by the evidence, accrued much less than one year before the suit was brought in the municipal court.

Anyway, however, even in case of lack of jurisdiction over the subject-matter on the part of an inferior court (such as the municipal court of Manila), under such circumstances as obtain in this case, Rule 40, section 11, provides:

"*Lack of jurisdiction.*—A case tried by an inferior court without jurisdiction over the subject-matter shall be dismissed on appeal by the Court of First Instance. *But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction.*" (Italics supplied.)

Finding the judgment appealed from in accordance with the facts and the law, we affirm the same with the costs in the three instances against the defendant. So ordered.

Ozaeta, De Joya, Perfecto, and *Bengzon, JJ.,* concur.

Judgment affirmed.

[No. L-223. April 12, 1946]

SUSANO AMOR, plaintiff and appellee, *vs.* FRANCISCO GONZALEZ, defendant and appellant

EJECTMENT; JURISDICTION OF MUNICIPAL COURT AND COURT OF FIRST INSTANCE; DATE OF ACCRUAL OF CAUSE OF ACTION; CASE AT BAR.—The contention of counsel for appellant F. G. in his first assignment of error that the municipal court lacked original jurisdiction, and the Court of First Instance appellate jurisdiction, over this case because the cause of action, according to him, accrued more than one year prior to the commencement of the suit in the municipal court, is untenable. The Court of First Instance, in view of the evidence, found the facts alleged in the complaint to have been sufficiently proven, and consequently gave judgment for the plaintiff. This necessarily includes the finding that the cause of action accrued about the month of March, 1945. On pages 6 and 7 of the record on appeal in this case there has been inserted by appellant's own counsel the transcript of the stenographic notes taken during the hearing of this case before the Court of First Instance, from which we find the finding of said court to be correct. The original complaint having been filed on April 23, 1945 (Record on Appeal, pp. 1, 2), it is clear that the original suit was lodged only about one month after the accrual of the cause of action.

APPEAL from a judgment of the Court of First Instance of Manila. Diaz, J.

The facts are stated in the opinion of the court.

Ricardo Gonzalez Lloret for appellant.
Jose Belmonte for appellee.

HILADO, *J.:*

This is an ejectment case originally brought in the Municipal Court of Manila, later appealed to the Court of First Instance of said city, and lastly brought here on appeal by the defendant Francisco Gonzalez. The defendants in the municipal court were Shiu Che Kong (*alias* Tiu Tiong Yu) and Francisco Gonzalez. The municipal court ordered both defendants to restore to the plaintiff Susano Amor the house in question, No. 2248 (ground floor), Rizal Avenue, Manila, and to pay him the "rents" plus the costs.

The case having been appealed to the Court of First Instance, only the defendant Shiu Che Kong (*alias* Tiu Tiong Yu) filed an answer to the complaint. The defendant Francisco Gonzalez, having failed to do so, was declared in default.

The facts are: that the plaintiff is the owner of the house in litigation; that the defendant Shiu Che Kong (*alias* Tiu Tiong Yu) about the month of March, 1945, without the knowledge nor consent of the plaintiff, entered into a contract with his co-defendant Francisco Gonzalez whereby the latter purported to lease the house to the former at the rate of ₱900 a month, the first defendant having paid to the second the "rents" from March to July, 1945, inclusive, without said Francisco Gonzalez having the owner's authority to let said house nor collect its rents; and that despite plaintiff's demand on defendants to vacate or surrender the possession of the premises and to pay the back "rents," they have refused and continue to refuse to do so. The foregoing facts appear proven in the transcript copied on pages 6 and 7 of the record on appeal; but the Court of First Instance declared that the "rent of ₱900 a month was excessive and it therefore appraised the reasonable value of the use and occupation of the house at ₱140 a month, taking into account the circumstances of time and place where the house is located.

Before the Court of First Instance gave its decision of July 23, 1945, the defendant Shiu Che Kong (*alias* Tiu Tiong Yu) and the plaintiff stated to the court that they had arrived at an amicable settlement, without specifying the details thereof; but said court, in order to avoid that the parties again litigate the same questions, and without

prejudice to any legal compromise which they might agree upon, gave its decision, condemning the defendants to restore to the plaintiff the house in question, No. 2248 (ground floor), Rizal Avenue, Manila; condemning the defendant Francisco Gonzalez to pay to the plaintiff the "rents" (which would more properly be called the reasonable value of the use and occupation of said house by reason of the absence of a contract of lease between the parties), at the rate of ₱140 a month, which said defendant had already collected from his co-defendant, and to reimburse to the latter the excess of what he had received from him from March to July, 1945, inclusive, plus legal interest; condemning the defendant Shiu Che Kong (*alias* Tiu Tiong Yu) to pay to the plaintiff the "rents" of said house at the indicated rate for the time elapsing after July, 1945 till complete restitution of the house to the plaintiff; ordering the defendant Gonzalez not to interfere with the possession and disposition of said house; and taxing the costs of both instances against the two defendants.

The contention of counsel for appellant Francisco Gonzalez in his first assignment of error that the municipal court lacked original jurisdiction, and the Court of First Instance appellate jurisdiction, over this case because the cause of action, according to him, accrued more than one year prior to the commencement of the suit in the municipal Court, is untenable. The Court of First Instance, in view of the evidence, found the facts alleged in the complaint to have been sufficiently proven, and consequently gave judgment for the plaintiff. This necessarily includes the finding that the cause of action accrued about the month of March, 1945. On pages 6 and 7 of the record on appeal in this case there has been inserted by appellant's own counsel the transcript of the stenographic notes taken during the hearing of this case before the Court of First Instance, from which we find the finding of said court to be correct. The original complaint having been filed on April 23, 1945 (Record on Appeal, pp. 1, 2), it is clear that the original suit was lodged only about one month after the accrual of the cause of action.

It is clear, therefore, that the judgment appealed from is in accordance with the facts and the law, for which reason it should be, as it is hereby, affirmed with the costs

Ozaeta, De Joya, Perfecto, and *Bengzon, JJ.,* concur.

Judgment affirmed.

RESOLUTIONS OF THE SUPREME COURT

REPUBLIC OF THE PHILIPPINES
SUPREME COURT

EXCERPT FROM THE MINUTES OF DECEMBER 9, 1946

* * * * * * *

"The court resolved that from December 11, 1946, to December 31, 1946, a special division of the court, composed of Justices Pablo, Perfecto, Bengzon, and Padilla, act upon interlocutory matters and habeas corpus cases."

* * * * * * *

REPUBLIC OF THE PHILIPPINES
PEOPLE'S COURT
MANILA

FIRST DIVISION

[CRIMINAL CASE NO. 348. FOR TREASON]

THE PEOPLE OF THE PHILIPPINES, Plaintiff

VERSUS

ADRIANO BUELA, Accused

DECISION

Charged with having adhered to the Empire of Japan at the time when it was at war with the United States and the Philippines, giving said Empire of Japan and the Japanese Imperial Forces in the Philippines aid and comfort in the following manner, to wit:

"1. That in or about 1943, in Sariaya, Tayabas, the above-named accused, for the purpose of giving and with intent to give aid and/or comfort to the enemy, did then and there unlawfully, wilfully and feloniously join the Ganap, a pro-Japanese organization; and in or about December, 1944, the above-named accused, for the purpose of giving and with intent to give aid and/or comfort to the enemy, did then and there unlawfully, wilfully and feloniously join and become a member of the Nacoco garrison, a pro-Japanese military organization, intended to help, aid and cooperate with the Japanese army in the detection and apprehension of guerrillas, and in fighting against the Filipino and American Armies.

"2. That in or about February 13, 1945, in Candelaria, Tayabas, the above-named accused, being armed, for the purpose of giving and with intent to give aid and/or comfort to the enemy, did then and there unlawfully, wilfully and feloniously lead, guide, assist, join and accompany a patrol of Japanese and Nacoco soldiers to barrio Santa Catalina, Candelaria, Tayabas, and in the raid in which the above-named accused actively participated, about 200 persons were killed and massacred and about 30 houses were burned; and the above-named accused, with intent to gain, did then and there unlawfully, wilfully and feloniously loot and carry away clothes and various articles from the house of the civilians.

"3. That on or about March 9, 1945, in Sariaya, Tayabas, the above-named accused, then armed with a rifle, for the purpose of giving and with intent to give aid and/or comfort to the enemy, did then and there unlawfully, wilfully and feloniously, in company with about ten Nacoco soldiers and one Japanese soldier, raid barrio Bucal, Sariaya, Tayabas, and confiscate a large quantity of palay from Lorenzo Abuan which the above-named accused and his companions took to Sariaya for the use of Nacoco and Japanese soldiers."

Adriano Buela, a citizen of the Philippines owing allegiance to the United States and the Commonwealth of the Philippines, was prosecuted for the crime of treason defined and penalized in article 114 of the Revised Penal Code.

The plea of the said accused to the charge is that of not guilty, and at the beginning of the trial he admitted in person that he is a Filipino citizen and that he had never relinquished such citizenship.

On the part of the prosecution, the following facts have been established without having been disputed by the defense:

In or about the month of August, 1944, the Japanese took over the whole site in the town of Sariaya, Tayabas, of the industrial plant of the National Coconut Corporation, Nacoco, for short, primarily for the purpose of making therein sacks from fibers of coconut husks for a certain japanese-owned corporation known in the said locality by the name of Maitechi. Filipino laborers were taken in by the Japanese and quartered in buildings belonging to the Nacoco within the premises to work on the extraction of fibers from coconut husks and to weave them into sacks. Admission to work as laborers in the Nacoco plant was strictly limited by the Japanese to members or followers of the Ganap Party who were holders of identification cards, commonly called "ladaw," signed by Benigno Ramos, the chieftain of the Ganap Party, and bearing on their face the picture of the holder. The laborers thus admitted were organized into a compact body, an idea conceived and put into effect by certain Japanese officers and one Primitivo Jose. Such body or organization composed by the said laborers became to be popularly called by the people, particularly the inhabitants of Sariaya, the "Nacoco Garrison" whose head was a Japanese by the name of Kei.

As the activities and guerrilla warfare of the guerrillas were becoming more and more intensified in the municipality of Sariaya itself and the neighboring towns from the later part of 1944 up to February, 1945, the making of sacks in the Nacoco plant was abandoned and its laborers, who, as expressed above, became the components of the so-called "Nacoco Garrison," were assigned to purely military duties and for such purpose were given military training under the instruction and command of one Japanese named Banto. Armed with rifles, with which they were provided by the Japanese, said group have been guarding the Nacoco premises, the approaches to, and strategic streets in, the town of Sariaya to prevent the infiltration of the guerrillas into the said town.

The accused admitted that, after the Nacoco plant was taken over, and operated by, the Japanese in or about the month of August, 1944, he was taken in to work as laborer

and that he was quartered in the premises together with many other laborers up to the time when the Japanese abandoned the said premises occasioned by the imminent liberation of the territory of Sariaya by the Fil-American forces.

The evidence for the prosecution convincingly shows the participations that the accused had had in the military activities of the so-called "Nacoco Garrison" which, it is evident, were for the aid and comfort of the enemy.

The accused, armed with a rifle, took turn in performing sentry duty at the premises of the Nacoco plant and in guarding, also armed with a rifle, certain streets of the town of Sariaya. Moreover, the accused with all other able-bodied affiliates of the "Nacoco Garrison" underwent military training emphasizing on the handling and use of rifles under the instruction of the Japanese.

Early in January, 1945, with the end in view to securing food commodities, around three hundred of said laborers, including the accused, headed by one Hashima, a Japanese subject, composing the "Nacoco Garrison" moved to barrio Mamala of the said municipality of Sariaya where they stayed for about one month. During their stay thereat, they dedicated themselves to the commandeering, the accused taking active part, of palay, camote, chicken and vegetables from the people of the said barrio for the purpose of piling up more food supplies for the Japanese and themselves. Thereafter, they returned to the Nacoco premises at Sariaya where they were again quartered.

At about half past eight on the night of February 21, 1945, two Japanese with the aid of the accused who was then armed with a rifle and some other companions of the accused in the so-called "Nacoco Garrison" organization apprehended and arrested Hilarion de Villa and Quirico Delica whose hands were tied behind their backs while on their way towards the Nacoco premises. From that time of their arrest up to the present both De Villa and Delica have never been seen again nor heard from. They are presumed for that reason to have been executed by the Japanese in the premises of the Nacoco at Sariaya.

Sometime in the month of March, 1945, the accused and about thirty others of the so-called "Nacoco Garrison," all armed with rifles, in company with a Japanese confiscated in barrio Bucal of the same municipality of Sariaya fifteen sacks of palay, each sack containing fifty gantas, belonging to one Lorenzo Abuan who had deposited them with one Lucio Gutierrez who, in turn, had hidden them in the house of one Francisco Comargo where they were thus confiscated.

With respect to count No. 2, the same remains unsubstantiated as the People's counsel did not adduce proofs thereon.

The evidence for the accused consisted solely of his own testimony. On how he came to work as laborer in the Nacoco plant at the time in question, he alleged that he was taken one day by five Japanese soldiers from the farm he was working in which was about four kilometers away from the town of Sariaya and brought to the said Nacoco site where he was quartered and assigned to the job of making sacks during the whole period of his stay there. And on the facts brought out by the evidence for the prosecution that he was affiliated with the so-called "Nacoco Garrison"; that he underwent military training; that he posted himself as guard, armed with a rifle, at the Nacoco premises and in certain streets of the town of Sariaya; that he was among those of the "Nacoco Garrison" organization who moved to, and stayed for about one month in, barrio Mamala; that he, armed with a rifle, was one of those who accompanied and aided a Japanese in the confiscation of the palay belonging to Lorenzo Abuan, the accused's defense was nothing more than plain denials. In regard to the apprehension and arrest of Hilarion de Villa and Quirico Delica by the Japanese in which, the evidence discloses, he took part, aiding the said enemy, the accused did not put up any defense. He did not even deny it.

It is fundamental that such denials of the accused are insufficient to overcome the proofs on the part of the prosecution, which we find are free from all doubts. The overt acts imputed to the accused in connection with the military functions of the so-called "Nacoco Garrison" having been satisfactorily proven it is difficult, rather impossible, to conclude other than that the accused was himself an affiliate of the so-called "Nacoco Garrison," and the laconic statement alone of the accused that, admitting it to be true, he was taken by some Japanese soldiers from his farm and brought to the Nacoco plant, implying that he did not himself seek to be admitted therein, without showing that his situation at the Nacoco plant was such that he could not have done other than that of aiding the enemy by participating in the military activities of the so-called "Nacoco Garrison" only under the compulsion of irresistible force from the Japanese, cannot make up an exculpation of the aid and comfort he has so given the enemy which reveals the treasonable convictions of the accused and his adherence to the enemy.

In view of the foregoing considerations, we find the accused, Adriano Buela, guilty, beyond reasonable doubt, of the crime of treason as defined and penalized in article 114 of the Revised Penal Code, with the mitigating circumstance of lack of instruction and without any aggravating circumstance to off-set the same, and we hereby sentenced him

to suffer the penalty of twelve (12) years and one (1) day of *reclusión temporal*, with the accessory penalties provided by law; to pay a fine of five thousand pesos (₱5,000), and the costs. The accused shall be credited in the service of this sentence with one-half of the time of his preventive imprisonment.

It is so ordered.

Manila, October 21, 1946.

ANGEL S. GAMBOA
Associate Judge

We concur:

LEOPOLDO ROVIRA
Presiding Judge

POMPEYO DIAZ
Associate Judge

REPÚBLICA DE FILIPINAS
TRIBUNAL DEL PUEBLO
SALA III

[CAUSA NO. 33]

EL PUEBLO DE FILIPINAS, Querellante

CONTRA

JUANITO LABITAN VINDUA, Acusado

SENTENCIA

El acusado Juanito Labitan Vindua lo está del delito de traición. La querella enmendada, en cuya virtud se siguió este proceso, alega siete cargos; pero, durante la vista, el Fiscal se limitó a substanciar cuatro, y son los señalados con los Nos. 1, 2, 3 y 6. Los consideraremos por separado y en el orden en que se exponen en la querella.

"1. That during the period above-averred (from January, 1942 to February, 1945) in the municipality of Subic, Province of Zambales and other places in the Philippines, the said accused for the purpose of giving and with intent to give aid and comfort to said enemy, did then and there willfully, feloniously and treasonably become, serve and act as informer of the Japanese Military Police (Kempei-Tai)."

El 28 de noviembre de 1944, un cuerpo de soldados japoneses llegó a la casa de Catalino Altona, levantada al pié del monte de Mabañgat de la comprensión de Olongapo, Zambales. Con los soldados iba el acusado, quien al ver a Catalino, le dijo: "Hace mucho tiempo que vengo bus-

cándote." Acto seguido los soldados amarraron a Catalino, y después a su esposa Guillerma Mora y se los llevaron al cuartel de la guarnición, en la población de Olongapo. Allí estuvieron encerrados los esposos hasta a fines de enero siguiente, en que, a causa de los frecuentes bombardeos aéreos de los americanos, los japoneses y sus compinches, los espías y los ganaps, hubieron de refugiarse en los varios vericuetos y zigzags que hay entre Olongapo y Dinalupihan. También se guarecieron en aquel lugar, el acusado, armado de un revolver de calibre .45 y dos granadas de mano, y los esposos Altona, que fueron obligados a cargar las provisiones de boca de la tropa. Cuando el 13 de febrero de 1945, el grupo enemigo se desbandó por las continuas acometidas de los nuestros, el acusado y el maridable regresaron a Olongapo, donde Vindua fué detenido por la *Counter Intelligence Corps.*

Seis días después, o sea, el 19 de febrero, el acusado prestó bajo juramento, una declaración ante el Teniente William H. Starbuck del Ejército Americano, la cual es de este tenor (Exhíbit B):

"AFFIDAVIT

The undersigned, Juanito L. Vindua, having been cautioned and sworn, deposes and says:

One day during the latter part of January, 1945, I was walking past Nazario Perea's house in Subic when his daughter, Eugenia Perea, came out and spoke to me. She asked me why I was in Subic when I knew the guerrillas here wanted me. She said the guerrillas were after her too because she was the wife of a Japanese. Then, after cautioning me not to tell anyone that she had told me, she gave me the names of many guerrillas. Some of the names she gave me are as follows:Adriano Valdez, Jose de la Paz, Dr. Albino Rodolfo, Luis Afable, Eduardo Lesaca, Candido Sajagan, Tranquilino de la Rosa, and many others. She said that these men were the officers of the guerrillas and if they were caught the men under them could be caught also.

After I had talked to Eugenia for a few minutes, her father, Nazario Perea, asked me to come in his house. I entered and he then told me that Adriano Valdez and other guerrillas were hiding in the barrio of Asinan and that Jose de la Paz, Jr., captain of the guerrillas, was hiding in Manganan barrio.

I gave the names of those guerrillas to the Japanese and several members of the Kempei went over to Perea's house to verify this information. I did not go with them but I could see them talking to Perea and his daughter. The Japanese then returned and asked me to point out the houses of these men whose names Eugenia and Nazario Perea had given me, which I did. The Japanese entered those houses but only three of the men were in their homes. These three men were: Adriano Valdez, Tranquilino de la Rosa, and Candido Sajagan. They were arrested and taken to the Japanese garrison for questioning. I know Adriano Valdez was beaten by the Japanese there, but I am not certain whether the other two men were maltreated or not. Tranquilino de la Rosa had his wrists tied together and was forced by the Japanese to lead them to the house of Luis Afable. Afable was not there, so the Japanese took what they wanted and then burned the house.

This was not the first time that Nazario and Eugenia Perea had given me information regarding the guerrillas. While I was living in Olongapo, Eugenia Perea was also living with a Japanese. She came to see me many times and gave information regarding the guerrillas, who they were and where they were hiding.

Nazario Perea had also given me information previous to this time, giving me the names and whereabouts of the guerrillas around Subic.

I passed all this information on to the Japanese and it caused the arrest of many persons, but I would not have known the names and whereabouts of all these guerrillas if it had not been for the information given to me by Nazario and Eugenia Perea.

(Sgd.) JUANITO L. VINDUA

Sworn to before me and subscribed in my presence this 19th day of Feb. 1945.

(Sgd.) WILLIAM H. STARBUCK
1st Lt. CAC
211th CIC Det.

Witnessed:
(Sgd.) FERMIN J. ALDERA
(Sgd.) HOMER R. CASTOR, Agent CIC."

Estos hechos se han establecido por el testimonio de los citados esposos. El secuestro de los Altona, en las expresadas circunstancias, la conducta del acusado al ir a compartir en el zigzag la suerte de los japoneses, de quienes tan solo se separó cuando ya era cierta e indubitable su derrota, y su clara admisión de que "Nazario and Eugenia Perea had given me information regarding the guerrillas in Olongapo and Subic, and I passed all this information on to the Japanese and it caused the arrest of many persons," (Exhibit B) prueban concluyentemente el cargo No. 1.

"2. That on or about September 27, 1944, in the municipality of Olongapo, Province of Zambales, the said accused, while acting as such informer of the *Kempei-tai*, for the purpose of giving and with intent to give aid and comfort to said enemy, did wilfully, feloniously and treasonably lead and accompany a patrol of Japanese soldiers to barrio Kababae to apprehend guerrillas, and once there, said accused taking advantage of the darkness of the night and with the aid of the said Japanese soldiers who were all armed thereby affording impunity, did then and there point and caused the arrest, torture and detention of Domingo Cuenca, Matias Baza, Emilio Corum, Brigido Baza, Honofre Ramos, Teofilo Billedo, the husband of Maria Javieras, Ricardo Lazara, Jose Santiago, Mariano Valdez, the husband of Lucila Arce, Sebastian Gloria, Arturo Winkler, Paterno Castillo, Gerardo Johnson for being guerrillas all of whom with the exception of Eduardo Lazara and Jose Santiago who were able to escape, were never heard from her seen since then.

El Capitán Edward Johnson declaró que el 22 de septiembre de 1943, algunos guerrilleros de Bataan, sospechando que el acusado era un espía del enemigo, le cogieron y le detuvieron, mientras se hacían averiguaciones de sus actividades. Indagaron su carácter y conducta del Capitán Johnson y como éste nada supiese o nada en claro se sacase de aquella indagatoria, el capitán recibió al acusado en su

unidad y le hizo "Assistant Adjutant," con rango de teniente, de la Zambales Military District, Olongapo Sector, de la cual el, Johnson, era el jefe. Estos hechos no fueron desmentidos por Vindua, al ocupar el banquillo del testigo.

Un año después, o sea, en la noche del 27 de septiembre de 1944, el acusado, acompañando a una partida de soldados japoneses, llegó al barrio de Kababae, Olongapo. Fueron de casa en casa y despertando al vecindario, cogieron a diez y siete vecinos, entre ellos a Edward Johnson, Jose Santiago, Ricardo Lazara, Domingo Cuenca, Onofre Ramos, Emilio Corum, Sebastian Gloria, Luis Villegas, Henry Johnson, Antonio Arco y Teofilo Billedo. Los reunieron al pié del puente de Kababae, y dejándolos allí bajo la vigilancia de algunos guardias, pasaron al barrio de Kalalake, donde detuvieron a otros vecinos, entre ellos a Francisco Jabaluyas, y por último, al barrio de Paniqui para coger a Guillermo Redondo, a que se contrae el cargo No. 3. Ocupados en esta tarea Vindua y los soldados, les sorprendió el amanecer del día siguiente, consiguiendo coger más de cuarenta y seis individuos en total. Después de concentrarlos al pié del mencionado puente, a eso de las 7 a. m., tomaron todos el camino de la población y los detenidos fueron encerrados en el cuartel de la policía militar. Allí fueron torturados sin compasión para arrancar la confesión de que eran guerrilleros o para obtener informes relativos a la guerrilla. José Santiago, que logró fugarse y llegar a la montaña, murió, pocos días después, a causa de haberse infectado sus heridas, las cuales eran tantas que tenía hinchado todo el cuerpo. Johnson, Lazara y Redondo declararon que, al lado del local, en que se hacía la indagatoria, había otro cuarto, donde se hallaba el acusado, a quien el investigador japones solía consultar durante el curso de la investigación, y que los citados testigos presenciaron dichos consultas y comunicaciones a traves de una hendedura o grieta, que había en el tabique madianero.

Del referido total de cuarenta y seis, ocho se fugaron de la detención, de los cuales solo cuatro lograron sobrevivir, y son los testigos de cargo, el Capitán Edward Johnson, Ricardo Lazara, Francisco Jabaluyas y Guillermo Redondo. En cuanto a los demás, nadie sabe donde están, ni lo que han sido.

Tales fueron los hechos que se han probado, mediante el testimonio de los citados supervivientes Johnson, Lazara y Jabaluyas, confirmado por las aseveraciones de Romana Redondo, madre de Ricardo Lazara, de Marciana Tulio, esposa de Domingo Cuenca, de Julita Fonseca, esposa de Onofre Ramos, de Irene Canlapan, madre de Emilio Corum, y de Dolores Gloria, Rosa Villegas, Lucila Arco y Juana Santiago, esposas, respectivamente, de los detenidos Sebastian Gloria, Luis Villegas, Antonio Arco y Teofilo Billedo.

"3. That on or about September 28, 1944, in the municipality of Olongapo, Province of Zambales, the said accused, while acting as such informer, for the purpose of giving aid and with intent to give the enemy aid and comfort, did accompany and lead about sixty Japanese soldiers to the house of Guillermo Redondo and did then and there wilfully, feloniously and treasonably point and accuse said Redondo of being a guerrilla who thereupon was arrested and brought to the *Kempei-tai* headquarters where he was tortured and detained until his escape a few days thereafter."

En la mañana de dicho dia 28 de septiembre, después que hubieron detenido a los vecinos de Kababae y Kalalake, que ya se ha relatado, tres soldados japoneses acompañados del acusado cogieron la banca de Félix Legaspi y se hicieron conducir al barrio de Paniqui, donde está enclavada la cabaña de Guillermo Redondo, un ex-soldado de la USAFFE, que tomó parte en las campañas de Bataan. Una vez allí, Vindua guió a sus compañeros a la cabaña y, hallando a Guillermo con su mujer Adelaida Palma, le cogieron, le embarcaron en la banca y le llevaron al pié del puente de Kababae, donde estaban reunidos los otros detenidos. Con éstos fué conducido al cuartel, a las siete de aquella mañana; y seis días después, o sea, en la madrugada del 3 de octubre, Guillermo Redondo, consiguió escaparse de la detención.

Estos son los hechos resultantes de la declaración de los esposos Guillermo Redondo y Adelaida Palma, corroborada por el bogador Félix Legaspi.

"6. That on or about January 25, 1945, at about 3 o'clock in the afternoon, in the municipality of Subic, Province of Zambales, while acting as such informer, the said accused, together with two *Kempei-Tai* soldiers, for the purpose of giving and with intent to give the enemy aid and comfort, did wilfully, feloniously and treasonably apprehend and arrest Adriano Valdez, a guerrilla member, and forthwith bring said Valdez to the Japanese garrison where he was cruelly beaten and tortured for about twenty hours."

En la tarde del 25 de enero de 1945, Adriano Valdez se hallaba en su casa, sita en el barrio de Asinan, del municipio de Subic, Zambales, departiendo con sus vecinos Candido Sahagun y Tranquilino de la Rosa, cuando llegó Vindua en compañía de dos soldados japoneses. Los soldados preguntaron primero a Valdez si tenía algún pescado, a lo que éste contestó que no, pero que, en su lugar, les ofrecía carne de carabao; luego el acusado y sus compañeros requisaron toda la casa, registro que no dió resultado alguno; y por último, se llevaron a Adriano Valdez, Tranquilino de la Rosa y Candido Sahagun.

Mientras se dirigían al cuartel, pasaron a la casa de Cecilio Esteban, a quien los soldados ordenaron que bajase; Esteban bajó de la casa y los soldados le cogieron.

Ya en el cuartel, los detenidos fueron interrogados acerca de sus relaciones con la guerrilla. Un soldado japones dijo,

dirigiéndose a Valdez: "Tu eres un capitán de la guerrilla"; y como éste negase la imputación, el japonés le amarró las manos y le golpeó varias veces con la culata de su revolver. Al día siguiente, como nada conseguían los japoneses, soltaron a los detenidos.

Sobre haberse probado estos hechos por el testimonio de Adriano Valdez y Cecilio Esteban, el acusado los admite lisa y llanamente en su declaración jurada (Exhibit B) ya preinserta, en la cual hallamos las circunstancias que concurrieron en la detención de los citados Valdez, de la Rosa y Sahagun.

El acusado ha negado en absoluto, como es natural, los cargos a él imputados y su defensa ha tratado de probar, por medio de sus compañeros de detención Miguel Pardinas y Florencio Caja y de su cuñada Loreto R. Vindua, que no era posible que perpetrara dichos cargos en el tiempo mencionado en la querella, 27 y 28 de septiembre de 1944 y 25 de enero de 1945, toda vez que en dichos días, el acusado estaba encerrado en la cárcel de la policía japonesa de Olongapo.

Esta coartada es inéficaz y no puede satisfacer al Tribunal, tanto porque se apoya en la sola declaración de una cuñada y de los camaradas de presidio, (Pueblo *contra* Cinco, Gac. Of. Tomo 37, pág. 2889, Nov. 4, 1939) cuanto porque el propio acusado y su parienta Loreto R. Vindua admitieron en repreguntas que, cuando ésta última visitó al acusado en septiembre y noviembre de 1944, encontró a Juanito Labitan Vindua en la propia casa de la testigo, conviviendo con su esposa y sus dos hijos, la cual casa dista de la aludida cárcel de la policía japonesa el tercio de un kilometro.

Tampoco debe prevalecer sobre las declaraciones de testigos veraces. No hay el menor indicio que haga sospechar que las pobres madres y esposas de las víctimas que desfilaron ante este Tribunal, hayan testificado movidas por algún resentimiento contra el acusado, como no sea el que produjera naturalmente el crimen de que fueron objeto sus hijos y sus maridos. Careado con estas testigos, el acusado hubo de confesar que no sabe porque estas mujeres declararon contra él.

Es cierto que, al referirse al Capitán Johnson, el acusado dijo que este testificó contra él al objeto de ocultar algunas infracciones de ley, que el Capitán y sus hombres habían cometido en aquella época de revuelta. Pero, este dicho es inaceptable, no solo porque no esta, en absoluto, corroborado por ninguna otra prueba, sino porque, sobre haber sido desmentido por el citado Capitán, el propio testigo de la defensa Amadeo Garcia aseveró que Johnson declaró contra su tío, Juanito Labitan Vindua, por haber éste delatado a los japoneses algunos soldados del Capitán. A

mayor abundamiento, hay el detalle de que algunos testigos de cargo estan relacionados con el acusado por lazos estrechos de parentesco y amistad: Marciana Tullo es prima de Vindua, Romana Redondo es su comadre, y Félix Legaspí, consocio en el negocio de la pesca.

Contiende por último la defensa de que se había presentado un solo testigo para probar el secuestro de los nombrados en el cargo No. 2; por lo que no se ha guardado la regla de dos testigos. Es verdad que, para acreditar la detención, por ejemplo, de Luis Villegas, tan solo declaró su mujer Rosa Villegas al efecto de que, en la referida noche de autos, llegaron a su casa el acusado y los soldados japoneses, quienes se llevaron a su marido, (y asímismo ocurrió en el caso de Domingo Cuenca, Sebastian Gloria y Teófilo Billedo). Pero, también es cierto que el hecho procesal, a que se refiere el cargo No. 2, no consistió solo en la aprehensión de las víctimas, sino también en otros actos exteriores, tales como el haber sido después concentrados al pié del puente de Kababae y por último, conducidos a la cárcel. Varios testigos establecieron estos hechos, corroborando la citada aprehensión aseverada por una testigo. Romana Redondo dijo que, detenido en su casa su hijo Ricardo Lazara, por soldados japoneses con quienes iba Vindua, fué llevado al pié del mencionado puente; y que habiendo seguido a su hijo, ella llegó a aquel sitio, donde se reunía a la gente y desde allí vió al acusado acompañar a los soldados al ir a secuestrar vecinos y luego venir con los detenidos. Así, las víctimas fueron traídas al lugar no en grupo, sino separadamente. El Capitán Johnson y Ricardo Lazara mencionaron a todos los nombrados en la querella y otros más, que procedentes de sus casas respectivas fueron concentrados en dicho lugar hasta las 7 a. m. en que fueron todos llevados al cuartel. Tenemos, pues, que, como el cargo No. 2 está hecho de partes distintas, desde el secuestro hasta el encierro de las víctimas, no era necesario que cada circunstancia ocurrida en cada jornada se demostrase por el testimonio de dos testigos.

"Where the overt act is single, continuous and composite, made up of, or proved by, several circumstances, and passing through several stages, it is not necessary, in order to satisfy the provisions of the Constitution requiring two witnesses to an overt act, that there should be two witnesses to each circumstance at each stage, as distinguished from the necessary proof of two witnesses to an act other than continuous and composite." (U. S. *vs.* Frick [D.C.N.Y. 1919] 259 F. 673.)

Los hechos probados, ya se aprecien en conjunto o separadamente, nos llevan a la conclusión de que el acusado fué un soplon y espía del enemigo. El suministrar al invasor noticias o informes, delatando a los guerrilleros, y el acompañarle para hostilizar a la guerrilla, favoreciendo

el progreso de las armas enemigas, constituye tanto una ayuda, socorro y aliento punible como una adhesión criminal al enemigo. Es no sólo ayudarle y socorrerle, sino hacer causa común con él. Concurriendo, pues, los actos delictivos con el intento de traicionar, y debiendo el acusado fidelidad al Gobierno de las Islas Filipinas, por su nacionalidad, tenemos ante Nos todos los elementos del delito de traición.

Por lo tanto, hallando al acusado Juanito Labitan Vindua culpable del delito querellado, y no concurriendo circunstancia alguna que modifique su responsabilidad criminal, el Tribunal le condena a sufrir la pena de reclusión perpetua, con las accesorias de la ley; y a pagar una multa de diez mil pesos (₱10,000); y las costas. Se le abonará la mitad del tiempo de la prisión preventiva sufrida.

Así se orden.

Manila, Filipinas, a 26 de octubre de 1946.

JOSÉ S. BAUTISTA
Juez

Conformes:

ARSENIO P. DIZON
Juez

TIBURCIO TANCINCO
Juez

REPÚBLICA DE FILIPINAS.
TRIBUNAL DEL PUEBLO
CUARTA DIVISIÓN

[CAUSA CRIMINAL NO. 579. POR TRAICION]

EL PUEBLO DE FILIPINAS, Querellante
CONTRA
PIO ANULAT, Acusado

DECISIÓN

Pío Anulat se halla acusado del delito de traición, y se declaró no culpable de la querella presentada al efecto, que contiene los cargos siguientes:

"That during the period comprised between January, 1942, and February, 1945, more specifically on or about the dates hereinbelow mentioned, in the different places in the Philippines hereinafter identified, and within the jurisdiction of this Honorable Court, the said accused being a Filipino citizen owing allegiance to the United States of America and the Commonwealth of the Philippines, not

being a foreigner thereof, in violation of his said duty of allegiance, knowingly, wilfully, unlawfully, feloniously and traitorously adhered to their enemy, the imperial Japanese forces in the Philippines, with whom the United States and the Commonwealth of the Philippines were then at war, by extending, facilitating and giving to said enemy aid and/or comfort in the following manner, to wit:

I

"That on or about July 8, 1943, in the barrio of San Vicente, municipality of Biñan, Province of Laguna, the accused, acting as informer or agent of the imperial Japanese forces in the Philippines, and for the purpose of giving and with intent to give aid and comfort to the said enemy, led and assisted a patrol of armed men including two Japanese civilians in a raid at the Nepa Bar of the abovementioned barrio and then and there caused and participated in the arrest and apprehension of one Amado de Ocampo, a guerrilla suspect, whom the accused subsequently delivered and turned over to the enemy and killed.

II

"That in or about the month of December, 1944, in the municipality of Biñan, Province of Laguna, the accused, for the purpose of adhering to and giving aid and comfort to the enemy, did then and there voluntarily enlist, join and serve in the "Kalipunang Makabayan ng mga Pilipino" (Patriotic League of Filipinos) or "Makabayang Katipunan Ng Mga Filipino" commonly known as "Makapili," an organization of military character, founded and organized for the purpose of giving material support and physical as well as moral assistance and aid to the Empire of Japan and the imperial Japanese forces in the Philippines, and as such member thereof, said accused with the intention of adhering to the enemy and giving it aid and comfort, received military training from the enemy, bore arms, joined and accompanied Japanese soldiers on patrol in search of and for the apprehension and arrest of guerrillas and in commandeering vehicles, food and other provisions for the use and benefit of the said enemy, did sentry and/or guard duty, fought side by side with the enemy in engagements with guerrillas and American forces, helped and took part in recruiting of forced labor for the enemy in the latter's retreat to the mountains, where he stayed, worked and fought with them until his capture or apprehension by the American and guerrilla forces."

En cuanto al cargo No. 1, las pruebas demuestran claramente que en o hacia el día 8 de julio de 1943 habia en la población del municipio de Biñan, Provincia de Laguna, una edificación denominada "Nepa" donde se jugaba y cualquiera tenía acceso a la misma. A la media noche de la indicada fecha, 8 de julio de 1943, inesperadamente entraron en la referida edificación el acusado y dos soldados japoneses vestidos de paisano. Los tres portaban cada uno sus respectivos revolveres. Y en medio de la confusión producida naturalmente por la presencia de los dos soldados japoneses acompañados por el acusado, este pregunto: "Está aquí Amado de Ocampo? Que ninguno de vosotros corra, de otro modo seran muertos." Acto seguido Amado de Ocampo, que era un guerrillero y estaba presente en el citado antro del juego, fué puesto bajo arresto por el acusado

y sus dos compañeros japoneses. Al percatarse de la situación en que se hallaba, Amado de Ocampo, a su vez, preguntó al acusado: "Por que me arresta Ud.? No he hecho nada malo." A lo que el acusado contestó: "Nuestro Capitán del Garrison No. 2 le necesita." Y seguidamente Amado de Ocampo fué llevado por sus aprehensores y le tenía agarrado el acusado desde que fué arrestado y mientras se dirigian al lugar donde le habían conducido. Desde entonces ya no se le ha visto al referido Amado de Ocampo. Y este fué arrestado y detenido, porque era un guerrillero y pertenecía a la unidad denominada R. O. T. C.

Estos hechos han quedado plenamente establecidos por el testimonio de Baldomero García y Vivencio Nuque, ambos vecinos y residentes del municipio de Biñan, y conocían desde hace unos diez años al acusado, que es también vecino y residente del mismo municipio.

Con respecto al cargo No. 2, las declaraciones de Baldomero Teñido, Gaspar Peña, Baldomero García, Vivencio Nuque y Florencio Jaime y el Exhíbit A–1 revelan los siguientes hechos: El mes de diciembre de 1944 se inauguró en el municipio de Biñan, Provincia de Laguna, la organización semi-militar denominada "Makapili," que es la abreviación o contracción del "Makabayan Kalipunan ng mga Pilipino," nombre social de la mencionada organización. Sus fines y propósitos eran, entre otros, dar cumplimiento a las obligaciones asumidas por Filipinas en su Pacto de Alianza con el Imperio del Japón; luchar contra los enemigos comunes de los japoneses al lado de estos y de los otros asiáticos en cualquier frente de la pasada guerra; colaborar sin limites ni reservas con el ejército y la armada del Imperio del Japón en Filipinas; y explicar, propagar e inculcar la idea de que el bienestar, la felicidad y la existencia de una Filipinas independiente depende enteramente de la victoria de las naciones asiáticas en dicha guerra, y en la estrecha asociación y colaboración con las mismas. (Exhíbit A–1). Los miembros de la "Makapili," en el municipio de Biñan, Laguna, establecieron y han mantenido por algún tiempo su propio cuartel en la calle Mabini de dicho municipio con su correspondiente caratula; hacian ejércicios militares y portaban rifles o revolveres; confiscaban de los vecinos arroz y otros comestibles y los llevaban a su propio cuartel; arrestaban a los guerrilleros o supuestos guerrilleros y servian a los japoneses. El acusado era uno de los que constituyeron en Biñan, Laguna, la mencionada organización y fué miembro visible de la misma; se le llamaba Capitán de los Makapilis y no solamente tomaba parte en los ejercicios militares que estos hacian sino que era el que les daba las ordenes durante dichos ejercicios. El acusado frecuentaba además el cuartel que los miembros de la "Makapili" tenían en la calle Mabini del municipio de Biñan;

acompañaba y guiaba a los soldados japoneses en diferentes sitios armado con un revolver al igual que sus compañeros japoneses.

Referente a la aprehensión de Amado de Ocampo, a que se contrae el cargo No. 1, el acusado no ha alegado defensa alguna. Se limitó a contestar negativamente cuando se le preguntó si era uno de los que ayudaron a los japoneses en el arresto de dicho Amado de Ocampo. Pero semejante negativa no puede prevalecer sobre las afirmaciones claras e inequivocas de Baldomero García y Vivencio Nuque que han identificado a dicho acusado. Baldomero García, que era el encargado de la mencionada casa de juego, aseguro positivamente que a la media noche del 8 de julio de 1943 el acusado y dos soldados japoneses entraron en la misma y, después de preguntar si estaba Amado de Ocampo, vieron a este y le arrestaron inmediátamente; Amado de Ocampo preguntó al acusado por que le habían aprehendido no habiéndo hecho nada malo, y este le replicó que le necesitaba el capitán del Garrison No. 2; y acto seguido el acusado y los dos soldados japoneses llevaron a Amado de Ocampo a un lugar que no se desprende de las pruebas y desde que fué aprehendido y mientras transitaban dicho acusado le tenía agarrado a Amado de Ocampo. Vivencio Nuque, por su parte, declaró categóricamente que estando a una distancia de seis o siete metros de la casa de juego denominada "Nepa", vió que el acusado y los dos soldados japoneses habían arrestádo a Amado de Ocampo dentro de la misma y el acusado le tenía agarrado desde el momento de su aprehensión hasta que salieron de la indicada casa y mientras se dirigían al lugar donde fué conducido. Y ambos testigos aseguraron que desde la noche de la aprehensión de Amado de Ocampo ya no se le ha visto a este hasta ahora. No se ha presentado prueba alguna ni se vislumbra en los autos algún dato o circunstancia que tienda a demostrar siquiera remotamente que dichos testigos tenían motivos para alejarse de la verdad a fin de perjudicar al acusado, que ni siquiera conoce a los mismos, según su propio declaración. No podemos dudar de las declaraciones de los mencionados testigos que, a nuestro modo de ver, reflejan los verdaderos hechos tales como han ocurrido.

La representación del acusado contiende en su informe que las declaraciones de dichos testigos son inconsistentes entre si, fundándose en que Baldomero García aseveró que en la noche en que fué arrestado Amado de Ocampo en la casa de juego denominada "Nepa" estaba en la misma Vivencio Nuque; mientras que este ha declarado que vió el arresto del referido Amado de Ocampo estando fuera de la indicada casa de juego y a una distancia de seis o siete metros, y que no ha entrado en la misma en la noche de referencia. La ligera discrepancia que menciona la

defensa del acusado no afecta a la credibilidad de dichos testigos ni destruye la eficacia de sus declaraciones. Es posible que cuando salieron de la mencionada casa de juego las personas que estaban en ella en el instante o inmediatamente después del arresto de Amado de Ocampo, Baldomero García diviso a Vivencio Nuque fuera del edificio, pero dada la confusión y el aturdimiento que produjeron naturalmente la presencia de los soldados japoneses acompañados por el acusado y el arresto inesperado de Amado de Ocampo, dicho Baldomero García al ocupar el banquillo testifical después de unos tres años, creyo haber visto a Vivencio Nuque dentro de la referida casa de juego en la noche en que fué arrestado Amado de Ocampo o supuso que dicho Vivencio Nuque era uno de los que salieron de la citada casa en el momento o poco después de dicho arresto, y por error, equivocación ú olvido, declaró que Vivencio Nuque estaba en la citada casa de juego en la noche de referencia. La experiencia cuotidiana demuestra que el que presencia hechos alarmantes en una rapida sucesión en medio de la confusión, del temor y de la excitación, al trasmitir después de algún tiempo sus impresiones se olvida o se equivoca de ciertos detalles de escasa importancia, y en sus manifestaciones aparecen naturalmente ligeras discrepancias. (Estados Unidos *contra* Go Foo Suy, 25 Jur. Fil., 191.) Y, cuando tales discrepancias obedecen a un mero error, equivocación ú olvido y no a una falsedad deliberada, es nuestro deber reconciliarlas si puede hacerse, como en el presente caso, porque la ley presume que todo testigo ha jurado decir la verdad y nada más que la verdad. (Estados Unidos *contra* Lasada, 18 Jur. Fil., 91.) Las discrepancias o diferencias inmateriales en las declaraciones de los testigos no afectan a su credibilidad a menos que haya algo que demuestre que deben su origen a una falsedad voluntaria (E. U. *contra* Lasada, *supra*.) A parte de que, el mismo acusado y sus dos unicos testigos suministran ciertos detalles altamente significativos que demuestran que el arresto de Amado de Ocampo por el acusado y sus dos compañeros japoneses en la mencionada fecha, es un hecho que no puede ponerse en tela de juicio. El acusado, tan sólo, negó haber ayudado a los japoneses en el arresto de dicho Amado de Ocampo, pero no el hecho mismo del arresto de este; y sus dos testigos Primo García y Jose P. Yatco admitieron paladinamente que habían oído que Amado de Ocampo fué arrestado el 8 de julio de 1943. Estas circunstancias, que se desprenden de las mismas pruebas de la defensa, corroboran fuertemente las declaraciones de los testigos Baldomero García y Vivencio Nuque referentes al arresto de Amado de Ocampo y tienden a marcar las citadas declaraciones con el sello de la verdad.

La representación del acusado señala además, en su informe, cierta divergencia en las declaraciones de los mismos testigos Baldomero García y Vivencio Nuque porque mientras el primero asevero haber oído las palabras pronunciadas por el acusado antes y durante el arresto de Amado de Ocampo cuando pregunto por este, el último declaro todo lo contrario, esto es, que no ha oído tales palabras. Pero este aparente divergencia carece de importancia y se explica facilmente. Baldomero García estaba dentro de la misma edificación denominada "Nepa" donde fueron pronunciadas dichas palabras y es muy natural que haya oído las mismas, mientras que no es nada extraño que Vivencio Nuque no las ha oído sencillamente porque este se encontraba fuera de la referida edificación y a una distancia de seis o siete metros de la misma, sobre todo si se tiene en cuenta que el acusado pronuncio dichas palabras, al preguntar por Amado de Ocampo, en medio de una confusión, y a parte de que a la sazón pasaban muchos vehiculos en la calle donde estaba situada la referida casa de juego.

Tocante a los hechos declarados por los testigos Baldomero García, Vivencio Nuque, Baldomero Teñido, y Gaspar Peña, en relación con el cargo No. 2, la defensa del acusado también consiste en una mera negativa. Dicho acusado, entre otras cosas, declaro que no se ha afiliado a la organización militar denominada "Makapili"; que no ha hecho ejercicios militares y que no ha confiscado de los vecimos productos alimenticios ni ha portado armas. Pero semejante negativa no puede enervar las declaraciones de los mencionados testigos de la acusación porque, como ya hemos dicho, Baldomero Garcia y Vivencio Nuque no tienen motivos para declarar falsamente contra el acusado porque este ni siquiera les conoce; y en cuanto a los testigos Baldomero Teñido y Gaspar Peña, tampoco existen razones para dudar de su testimonio, porque no tenían motivos para fabricar los hechos que han declarado, sobre todo Gaspar Peña a quien el acusado tampoco le conoce. Es verdad que para desacreditar o debilitar el testimonio del testigo Baldomero Teñido el acusado declaro que en cierta ocasión dicho testigo y un policía llamado Aciong se presentaron a su casa buscando palay; que el les informo que ya le habían sacado hace una semana dos cavanes de palay, pero Baldomero Teñido se mostro medio disgustado y le dijo que la gente de Biñan podría sufrir las consecuencias, porque por una cosa tan sencilla no podían prestar cooperación a los japoneses; y que en vista de la actitud algo enojada y de la velada amenaza de dicho Baldomero Teñido el se avino, de mala gana, a darle y de hecho le dió dos cavanes de palay. Si este fué el caso, si es cierta la declaración del acusado sobre este respecto, Baldomero Teñido no podía haber abrigado algún rencor o resentimiento contra el acusado de

quien consiguio su deseo aún valiéndose de amenaza, y según el curso natural de los acontecimientos de la vida, el que debio haberse disgustado es precisamente el acusado y no Baldomero Teñido porque el acusado es el que fué intimidado y privado de una manera impropia y casi contra su voluntad de dos cavanes de palay. Ordinariamente, si no casi siempre, el despojado, el que fué privado de lo que es suyo es el que siente resquemor o pesadumbre contra el expoliador y no este contra aquél.

Los hechos que el Tribunal encuentra y declara probados constituyen el delito de traición, tal como se define en nuestro Código Penal Revisado el mencionado delito. Y, el acusado, que es un ciudadano filipino, al realizar los referidos hechos en y durante el tiempo en que los Estados Unidos y el Commonwealth de Filipinas estaban en guerra contra el Imperio del Japón, ha demostrado su manifiesta intención de traicionar a su país.

La ayuda prestada por el acusado a las hordas niponas y a la realización de sus nefastos designios resulta clara y evidente. El 8 de julio de 1943, por la noche, el acusado que portaba un revolver, acompaño y guio a dos soldados japoneses, que también estaban armados, para arrestar y de hecho y en realidad arrestaron al guerrillero Amado de Ocampo llevándole después a un lugar, que las pruebas no revelan, y cuya suerte se ignora hasta ahora, porque desde que fué aprehendido ya no se le ha visto y se cree que fué ejecutado por las fuerzas enemigas. De esta manera el acusado ha prestado una ayuda efectiva a los soldados o subditos de una nación enemiga en su campaña para suprimir o por lo menos para debilitar el movimiento de resistencia de los guerrilleros, quienes no obstante las dificultades que sufrían y los peligros a que estaban expuestos durante la ocupación militar japonesa han mantenido, firme e inalterable, su fe y lealtad al gobierno de su país y al de los Estados Unidos. El acusado fue además uno de los que constituyen en Biñan, Laguna, la organización semi-militar denominada "Makapili" cuyos fines y propósitos ya se han mencionado y que aparecen clara y especificamente consignados en su escritura social marcada Exhíbit A, que forma parte de los archivos de la oficina de los Acusadores Especiales y de la cual es copia fiel y exacta el Exhíbit A–1. La autenticidad y el debido otorgamiento del referido Exhíbit A se ha demostrado por medio de la declaración de Florencio Jayme, que fué bibliótecario de la CIC, quien identificó la firma de Aurelio Alvero, uno de los que suscriben dicha escritura social. Teniendo en cuenta los fines y propósitos de la mencionada organización, el acusado al unirse a la misma y al tomar parte en sus varias y diversas actividades ayudó de una manera directa y eficaz en la realización de los planes del enemigo de suprimir todo movi-

miento tendente a liberar a nuestro país de la dominación nipona.

Y, los mismos actos externos de ejecución (overt acts) realizados por el acusado en la forma y bajo las circunstancias mencionadas patentizan claramente su abierta adhesión a los nefarios invasores identificándose y haciendo causa común con los mismos en la ejecución de sus torpes e ignominiosos designios.

Por estas consideraciones, declaramos al acusado culpable del delito de traición, fuera de toda duda racional, sin ninguna circunstancia modificativa de responsabilidad y le condenamos a la pena de reclusión perpetua, con las accesorias de ley, a pagar una multa de diez mil pesos (₱10,000) y las costas de juicio.

Así se ordena.

Manila, Filipinas, 12 noviembre 1946.

JOSE BERNABE
Juez Asociado

Concurrimos:

EMILIO RILLORAZA
Juez Asociado

MANUEL ESCUDERO
Juez Asociado

REPUBLIC OF THE PHILIPPINES
PEOPLE'S COURT
CEBU CITY

[CRIMINAL CASE NO. 5352. FOR TREASON]

THE PEOPLE OF THE PHILIPPINES, Plaintiff
VERSUS
GREGORIO HONTANOSAS, Accused

DECISION

The crime of treason is imputed to the accused Gregorio Hontanosas in accordance with the general allegations and count No. 1, count No. 2, count No. 3, count No. 4, count No. 5, count No. 6, count No. 7, and count No. 8 in the information.

Of the eight counts alleged in the information, the prosecution only offered evidence to prove count No. 1, count No. 2, count No. 4, count No. 5, count No. 6 and count No. 7.

As regards the general allegations and counts Nos. 1 and 2:

The general allegations and count No. 1 and count No. 2 in the information, briefly stated, allege:

That during the period comprising between December 8, 1941 and September 2, 1945, the accused Gregorio Hontanosas not being a foreigner, but a filipino citizen, in violation of his duty of allegiance, did then and there adhere to the Imperial Japanese Forces in the Philippines and Empire of Japan then at war with the United States and the Commonwealth of the Philippines, giving said enemy aid and comfort in the following manner to wit:

That during the period of the Japanese Military occupation of the Philippines, in the Province of Bohol, Philippines, the accused did employ himself as, and performing the duties of special agent or informer of the Puppet Provincial Governor of Bohol, Agapito Hontanosas, who is the brother of the herein accused, and given a firearm with ammunitions, which he carried at all times and as such special agent or informer, the accused observed and watched guerrilla activities, gathered informations of military nature, valuable to the enemy which he transmitted and communicated to the Puppet Provincial Governor, or the *Kempei Tai*, or the Japanese Military Police, and accompanied and participated in armed patrols of Constabulary and Japanese soldiers in search of and for the purpose of apprehending, as they did apprehend, guerrillas and persons aiding an/or in sympathy with the resistance movement in the Philippines; and maltreated, tortured, apprehended and intimidated guerrillas and relatives of guerrillas in his efforts to make the said guerrillas to surrender.

As regards count No. 2:

That during the period of the Japanese military occupation, the accused, while acting as special agent or informer for the Puppet Provincial Governor of Bohol, Agapito Hontanosas, with the intent to give aid and comfort to the Imperial Japanese Forces in the Philippines, did join, accompany, and participate in armed patrol of Constabulary soldiers in the barrio of Songculan, Dawis, Bohol, in search of guerrillas and as a result of said patrol, the said accused did maltreat the civilians and relatives of guerrillas, telling them that if the guerrillas will not surrender, they will be arrested by him (the accused) and turned over to the Japanese Military authorities.

Graciano Manique, prosecution witness, testified: That the accused is a brother to the Puppet Governor, Agapito Hontanosas; that during the period embracing from 1942 to October, 1944, he was the special agent of the Puppet Governor; that he served as such since the Japanese oc-

cupation until the Puppet Provincial Governor was captured by the guerrilla forces.

Juan de la Peña, prosecution witness, testified in substance: that, on July 20, 1944, in the barrio of Songculan, Dawis, Bohol, the accused came to his house; that he slapped him five times; that he whipped his revolver and knocked him on the head; that he (witness Juan de la Peña) fell on the floor of his house; that he was brought to Tagbilaran; that while in Tagbilaran he was beaten with a wooden stick, and was dragged to a camote field; that he was ordered by the accused to look for his son, Segundino de la Peña, who was a guerrilla member, with the threat that should he fail in locating him the *Kempei Tai* would kill all the members of his family; that he was ill in bed for two weeks as a consequence thereof. On cross examination he stated that he had been previously investigated by the CIC.

Guadalupe Romanos, another prosecution witness, wife of the witness Juan de la Peña, testified, corroborating in general the testimonies of her husband, and in particular, she declared that the accused came to inquire about her son who was a guerrilla member, and that her husband received punishment. She also testified that when the accused came he was accompanied by another filipino by the name of Francisco Rara.

Candido Somaylo, testified as follows:

That the accused Gregorio Hontanosas and one Francisco Rara came to his house asking for his brother who was a guerrilla member; that the accused slapped him, and threatened to kill him (the witness) if his brother would not show up.

Emilia Lopez testified: That the accused came to their house to inquire for Hilarion, her brother-in-law; that he slapped her husband; that she pleaded not to punish her husband, but the accused threatened her to be killed if she did not keep quiet; that the accused also threatened her husband with his revolver. On cross examination, she testified that she was a distant relative of the accused.

Placido Loquias, and Faustino Loquias corroborated the previous prosecution witness.

The prosecution also offered Exhibit A in evidence, which was admitted by the Court. Exhibit A is an affidavit subscribed and sworn to by the accused on the 21st day of December, 1944, wherein he admitted that he was a special agent of the Puppet Governor Agapito Hontanosas, and that while he was such special agent, all orders coming from the Governor were obeyed by him.

This court gives credit to the testimonies of the witnesses Graciano Manigque, Juan de la Peña, Guadalupe Romanos, Candido Somaylo, and Emilia Lopez. The gen-

eral allegations and count No. 1, are fully supported by the evidence adduced by the prosecution.

The accused in his behalf testified: that he was merely a property custodian during the Puppet Government. This testimony of the accused cannot offset the explicit testimony of Graciano Manigque and others to the effect that he was the special agent of his brother, the Puppet Governor, Agapito Hontanosas.

As regards count No. 4:

Count No. 4 alleges, in brief, that the accused did manhandle and torture Juan de la Peña, father of Segundino de la Peña, a guerrilla member, and threatened said Juan de la Peña to be arrested and turned over to the Japanese Military authorities for execution if his son Segundino de la Peña would not turn up.

The prosecution offered in support of the allegations of count 4 the testimonies of witnesses Juan de la Peña and Guadalupe Romanos. Their declarations were already reproduced above in the discussion of counts No. 1 and No. 2.

The allegations in count No. 4 have been fully substantiated by the testimonies of said witnesses Juan de la Peña and Guadalupe Romanos.

As regards count No. 5:

Count No. 5, in brief, states: that the accused manhandled and tortured a certain Candido Somaylo, brother of Hilarion Somaylo, a member of the Bohol Area Command of the USFIP, when the said Candido Somaylo in answer to the question of the herein accused, told the latter that he did not know where Hilarion Somaylo was, and he threatened Candido Somaylo that if said Hilarion Somaylo would not surrender, he will arrest him and turn him over to the Japanese Military authorities.

The prosecution in order to substantiate the allegations of this count No. 5, offered the testimonies of Candido Somaylo and Emilia Lopez. The testimony of Candido Somaylo on this point has already been reproduced in the discussion of count No. 4. With regards to the testimony of Emilia Lopez, the same has been reproduced in the discussion of count Nos. 1 and 2.

This court is convinced that the accused Gregorio Hontanosas, on or about the 20th of July, 1944, in the barrio of Songculan, municipality of Dawis, Province of Bohol, arrested, manhandled and tortured Candido Somaylo the brother of Hilarion Somaylo, a member of the USFIP and threatened him that if his brother did not surrender, he (witness Candido Somaylo) would be turned over to the Japanese Military authorities.

As regards count No. 6:

Count No. 6, briefly stated, alleges: That the accused during the period of the Japanese Military occupation of the Philippines, in the Province of Bohol, while acting as special agent or informer for the Puppet Governor of Bohol, with the intent to give aid and comfort to the Japanese Imperial Forces in the Philippines, did confiscate Bohol emergency notes issued by the guerrilla authorities, with the authorization of President Quezon and General Mc-Arthur.

To prove this count, the prosecution offered the testimonies of Narcisa Estoque and Paulina Romanos. Narcisa Estoque testified, in substance, that on the date and place mentioned in the count No. 6, while she was in the cockpit in the barrio of Songculan, Dawis, Bohol, selling some articles, the accused came and took away her money which was kept in a wallet; that among the paper bills there were Japanese mickey mouse notes and also Philippine emergency currency; that there were ₱30 of the Bohol emergency notes and also Mindanao emergency notes; that the accused returned to her the mickey mouse Japanese money, but retained the emergency notes; that the accused exhibited the emergency notes to the people around saying "this money is prohibited" and tore said paper money to pieces; that the accused threatened her to be brought to the *Kempei Tai;* and that he was armed.

Paulina Romanos corroborated the testimony of Narcisa Estoque, stating that on June of 1944, the accused herein took away the emergency money of said Narcisa Estoque and tore them into pieces.

This court finds that the allegations of count 6 have been fully supported by the testimonies of Narcisa Estoque and Paulina Romanos. Although the accused, in his own defense, denied that he never tore the emergency notes belonging to Narcisa Estoque, his mere denial cannot offset the explicit and positive testimonies of said two witnesses, Narcisa Estoque and Paulina Romanos.

As regards count No. 7:

Count No. 7 briefly states; that sometime in July, 1944, in the barrio of Songculan, municipality of Dawis, Province of Bohol, Philippines, the accused, while acting as special agent or informer for the Puppet Governor of Bohol, with the intent to give aid and comfort to the imperial japanese forces in the Philippines, then enemy of the United States and the Commonwealth of the Philippines, did maltreat and torture a certain Fausto Loquias, brother of Julian Loquias, a guerrilla member in his (the accused's) efforts to make the said Fausto Loquias reveal the whereabouts

and hiding place of his (Fausto Loquias') brother, Julian Loquias.

Placido Loquias and Fausto Loquias testified for the prosecution to prove the allegations in count No. 7. Placido Loquias, in substance, averred: that on July 20, 1944, the accused came to his house situated in the barrio of Songculan, Dawis, Bohol, and inquired for his brother, a guerrilla member; that he told the accused that his brother was in the mountain; that the accused slapped and hit him with his pistol on the shoulder; that while he was being thus maltreated his other brother by the name of Fausto Loquias, came up to his house and the accused immediately met him with a slug, and his said brother lurched toward the wall of the house. On cross examination, Placido Loquias testified that the accused on that occasion came alone.

Fausto Loquias corroborated the testimony of his brother, declaring particularly that his brother fell on the floor as a result of the punishment. On cross examination, Fausto Loquias testified that the accused was a follower of the Japs.

The citizenship of the accused was proved:

"FISCAL: In order to obviate the proceedings we ask if the accused admits that he is a Filipino citizen?

ATTORNEY CLORIBEL: We admit.

JUDGE BORROMEO: Do you admit that you are a Filipino citizen since birth and you have always been a Filipino?

ACCUSED: Yes, sir.

Q.—Are you Filipino citizen by birth?—A.—Yes, sir."

For the defense, Benedicto Longat, Julito Quijada, Silverio Relloraso, Otelo Abihanon, besides the accused himself, testified. Benedicto Longat merely denied the fact proven by the evidence for the prosecution that Juan de la Peña was struck by the accused and that Fausto and Placido Loquias were not slapped by him (the accused.) He also declared that the accused did not carry around any firearm. This witness further testified that these three witnesses for the prosecution Juan de la Peña, Fausto and Placido Loquias had no grudge whatsoever against the accused because he tried to protect them.

Julito Quijada testified that the accused did not tear the emergency notes belonging to Juanita Nistal; that the accused did not bear firearm.

Silvestre Relloraso testified that the accused did not arrest any guerrilla member nor bear firearm.

Otelo Abihanon testified that there was no incident regarding the tearing of emergency notes.

As it may be seen in the declaration of the witnesses for the defense, their testimonies consisted mostly of denial of acts attributed to the accused. This denial cannot coun-

teract the clear, positive and explicit testimonies of prosecution witnesses.

"* * *. It is a general rule of evidence that affirmative testimony is stronger than negative; in other word, that the testimony of a credible witnesses, that he saw or heard a particular thing at a particular time and place, is more reliable than that of an equally credible witness who, with the same opportunities, testifies that he did not hear or see the same thing at the same time and place. The reason for this rule is that the witness who testifies to a negative may have forgotten what actually occur, while it is impossible to remember what never existed. (Jones on Evidence, Sec. 898) * * *."

The defense filed a memorandum bringing out the following points: that no guerrilla members were captured through the information or effort of the accused; that the accused was in sympathy with the guerrilla forces because he had given advise to them to be careful to avoid capture; and that the prosecution witnesses at one time were imprisoned by the guerrilla soldiers.

The prosecution did not deem necessary to answer the memorandum filed by the defense.

The contentions of the defense in his memorandum even assuming that they be true, cannot in any way affect the probative value of the testimonies of the prosecution witnesses. His contention that no guerrilla member was ever caught through the information or effort of the accused and, therefore, no crime could be attributed to him, cannot stand in the crime of treason, because although his activities were not successful in capturing guerrilla members, he intended to capture them by trying to find out their whereabouts and threatening their relatives so that they would surrender.

In the light of the evidence adduced by the prosecution witnesses above mentioned, this Court is fully convinced that the general allegations and count 1, count 2, count 4, count 5, count 6, and count 7 in the information have been fully proven. With regards to Exhibit A, the accused while testifying in his behalf, expressly admitted that the signature appearing therein was his.

The accused committed the maltreatment to the relatives of guerrilla members and other treasonous acts imputed to him without the presence of Japs. This showed that he heartily adhered to the enemy.

The court finds that the accused adhered to the Imperial Japanese forces in the Philippines by giving said enemy aid and comfort. He tried to find out guerrilla activities and the whereabouts of the guerrilla members. He maltreated civilians and relatives of guerrilla members. He tore emergency notes issued by the guerrilla authorities with the authorization of President Quezon and General MacArthur.

In view of the foregoing considerations, the court, finding the accused Gregorio Hontanosas, guilty of the crime of treason, as defined in article 114 of the Revised Penal Code, sentences him to suffer the penalty of *reclusión perpetua* with accessory penalties of civil interdiction for life and perpetual absolute disqualification, and to pay a fine of ₱15,000 and the costs.

So ordered.

Cebu City (for Tagbilaran, Bohol), July 18, 1946.

VICENTE VARELA
Associate Judge

We concur:

FLORENTINO SAGUIN
Associate Judge

FORTUNATO V. BORROMEO
Associate Judge

UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES
PEOPLE'S COURT
FIFTH DIVISION

[CRIMINAL CASE NO. 205. FOR TREASON]

THE PEOPLE OF THE PHILIPPINES, Plaintiff
VERSUS
ROQUE BADILI, Accused

DECISION

The charges in the amended information imputing the herein defendant Roque Badili to have committed treason to the United States of America and the Government of the Philippine Commonwealth are as follows:

"That during the period comprised between January, 1943, and December, 1945, more specifically on or about the dates and periods herein below mentioned in the City of Cebu, Province of Cebu, and Bohol, Philippines, within the jurisdiction of this Court, said accused not being a foreigner but a Filipino citizen owing allegiance to the United States of America and the Commonwealth of the Philippines in violation of said duty of allegiance did, then and there wilfully unlawfully, feloniously, and treasonably adhere to the Empire of Japan with which the United States and the Philippines were then at war, giving said enemy the Empire of Japan and the Imperial

Japanese forces in the Philippines, aid and/or comfort in the following manner, to wit:

1. That sometime during the month of January, 1943, in Cebu City, Province of Cebu, Philippines, for the purpose of giving and with the intent to give aid and comfort to the enemy, the accused herein who was then a policeman and an undercover agent for the Japanese *Kempei Tai* in Cebu and a constant companion of Japanese soldiers in their mopping-up operations against the guerrillas did, then and there wilfully, unlawfully, feloniously and treasonably arrest one Venancio Gutierres in the latter's house as a guerrilla suspect, taking him to the *Kempei Tai* headquarters where said Venancio Gutierres was investigated and tortured by the accused and the Japanese soldiers by tying his hands, hanging him up and beating his body all over with a baseball bat;

2. That sometime during the month of August, 1944, in Cebu City, Province of Cebu, for the purpose of giving and with the intent to give aid and comfort to the enemy and her military forces, the accused herein who was a policeman and an undercover for the Japanese *Kempei Tai* and a constant companion of the Japanese officers in their mopping-up operations against the guerrillas did, then and there wilfully, unlawfully, feloniously and treasonably cause to be arrested one Macario Castañares for alleged guerrilla connections, taking the latter to the Japanese *Kempei Tai* Headquarters and there the accused and several Japanese soldiers did tie his hands and severely beat him up, thereby causing his face to be swollen and his body sore all over, and thereafter detaining him for nine days;

3. That sometime during the month of September, 1943, in the City of Cebu, Province of Cebu, said accused who was then a policeman and an undercover for the Japanese *Kempei Tai*, with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany patrols of Japanese Military Police (*Kempei Tai*) to Minlanilla, Guadalupe, Cordoba and San Nicolas for the purpose of apprehending guerrillas and guerrilla suspects; that while in Guadalupe, said accused and his Japanese and Filipino companions did have an encounter with the guerrillas, during which fighting the accused herein was shot in the legs and arms, on account of which he was brought to the Hospital, treated and taken care of by the Japanese until he fully recovered from his wounds; that in the patrol at Minglanilla, the accused herein did confiscate 6 truck tires for the use of the Japanese Army and personal belongings consisting of clothing and jewelries belonging to civilians which accused herein sold for his own personal benefit.

4. In or about September, 1944, in Cebu City, in conspiracy with the enemy and other Filipino undercovers, said accused for the purpose of giving and with intent to give aid and comfort to said enemy did, then and there wilfully, feloniously and treasonably cause the killing of Dionisio Abatol for alleged guerrilla activities.

5. In or about August, 1944, in Capas, Cebu, in conspiracy with the enemy and other Filipino undercovers, said accused for the purpose of giving and with intent to give aid and comfort to said enemy, did then and there wilfully, feloniously and treasonably cause the torture of Pedro Cabañada and others unknown, and the killing of four guerrilla prisoners unknown, for alleged guerrilla activities.

6. In or about February, 1944, in San Nicolas, Cebu, in conspiracy with the enemy and other Filipino undercovers, said accused for the purpose of giving and with intent to give aid and comfort to said

enemy did, then and there wilfully, feloniously and treasonably cause the capture and torture of Vicente Padilla for alleged guerrilla activities.

7. In or about June, 1944, in Inabanga, Bohol and its environs, in conspiracy with the enemy and other Filipino undercovers said accused for the purpose of giving and with intent to give aid and comfort to the enemy did, then and there wilfully, feloniously and treasonably accompany Japanese soldiers in mopping-up operations, looting, torture and killing of civilians unknown, for their alleged guerrilla activities.

8. On or about July 16, 1944, in Pasil, San Nicolas, Cebu City, Cebu, said accused in conspiracy with the enemy and other Filipino undercovers, said accused with the intent and purpose of giving said enemy aid and comfort did, then and there wilfully, feloniously and treasonably capture Lt. Pacifico Rosales of the guerrillas, tie and torture him and did drag him to a sailboat and kill him while in the sea.

That in the commission of the crime, concurred the aggravating circumstances of the abuse of superior strength, treachery, unnecessary cruelty and with the aid of armed band."

Several witnesses testified for the state to the effect that Roque Badili was an undercover agent for the Japanese Military Police or *Kempei Tai* in Cebu during the period comprising January, 1943 up to July, 1944. This accused was seen on several occasions by witnesses Macario Castañares, Pedro Bacon, Albino Lasala, Vicente Padilla, Francisca Garcia and Basilio Argozo accompanying the Japanese and forming part of their patrols in Cebu in their search for guerrillas and guerrilla suspects carrying always with him a revolver.

On the overt act recited in count No. 1, the evidence shows that at about the middle of January, 1943, Badili arrested Venancio Gutierrez, one of the witnesses for the prosecution in this case, and brought him to the *Kempei Tai* Headquarters in the City of Cebu where he was investigated. The japanese tied him behind his back and he was hanged and beaten in the presence of Badili.

In count No. 2, witnesses Macario Castañares and Pedro Baton asserted that the former was approached and arrested by Badili on the precise moment when he was about to board a truck in T. Padilla Street, Cebu City, on August 16, 1944, at about 11 o'clock a. m. This accused brought him to the Kempei Tai Headquarters at the pier on the ground that he was a guerrilla suspect. Badili and several Japanese soldiers tortured him for over two hours, hands tied, after which he was imprisoned for nine days. Sometime during October, 1944, Badili in company with several Japanese soldiers went to Mandawe, a town of the Province of Cebu. Badili ordered Castañares to carry sacks containing salt from the house of one Damaso Cuano to the truck to be delivered to the city for the use of the Japanese soldiers.

To prove count No. 7, Felixberto Tariman and Tito Caballero were placed on the witness stand. On June 24, 1944, according to Tariman, while he and his family were in Pandanan, Jetafe, Bohol Province, several Japanese soldiers and 10 Filipino undercovers including Roque Badili arrived. All the people in the place were ordered to gather near the Pandanan school. In obedience to said order, Tariman also went to that school building. Badili investigated Tariman and under threats ordered him to reveal where his (Tariman's) revolver was. Tariman answered that he had returned it since 1938, but was detained because Badili stated that Tariman had a brother named Felipe who was a guerrillero on account of which Felixberto Tariman was imprisoned for 21 days. He was able to get out and return to Cebu City, because Badili was out on patrol. Badili at that time always carried with him a revolver and he always accompanied the Japanese in their patrols in search of guerrillas and guerrilla suspects.

Sometime in June, 1944, Tito Caballero testified, while he was in Bagongbanua, Tubigon, Bohol, where he and his family had evacuated, several Japanese soldiers, with Filipino undercovers including Roque Badili went to his evacuation place. Badili, Adlawan and other undercover agents denounced him to be a soldier and to posses firearms. His wife and a daughter were kept as hostages by the Japanese and the undercover agents until he produce his firearms. Later on, they were released because Caballero insisted that he had no firearms to surrender.

The overt act alleged in count No. 8 is proven by the testimony of three witnesses, namely Francisco Garcia, Pastor Abellana and Basilio Argozo. The defendant and four other undercover agents, among them Baustista and one Pailing, went to Pasil, Cebu City in the morning of July 16, 1944. Guerrilla Lt. Pacifico Rosales was caught by these undercovers at the house of Mrs. Francisca Garcia by order of Badili. The lieutenant was tied by the hands with a rope and dragged to a boat then anchored at the beach nearby, Badili holding one end of the rope, and his companions placed the victim on board the boat where Bautista and Pailing were boarded while Badili rode on another boat near each other leaving at the same time for Bohol upon the order of the defendant. Witness Abellana had been looking for the lieutenant since July, 1944, and had not seen him anymore nor heard of him alive, but all the information he had gathered was to the effect and so he reported to the guerrilla commander that the missing guerrillero died, killed in the middle of the sea on July, 1944. Mrs. Garcia also testified that since that day she has not seen Lt. Rosales nor heard from him anymore.

The defendant interposed with his denial to the charges the defense that he was forced to join the Japanese under their threat to kill him otherwise. Obvious it is that this is not a valid defense for the evidence is conclusive that he, being a Filipino citizen by birth, voluntarily identified himself with the activities of the Japanese during the time of their domination in Cebu while the United States and the Commonwealth of the Philippines were at war with the Empire of Japan, thus violating his loyalty to both governments. "The social system would be subverted and there would be no protection for persons or property if the fear of man, needlessly and cravenly entertained, should be held to justify or excuse breaches of the criminal law." (Bain *vs.* State, 67 Miss. 557, 560.) "Fear as an excuse for crime has never been received by the law. No man, from fear of circumstances to himself has the right to make himself a party to committing mischief upon mankind." [Lord Denhan in Reg. *vs.* Tyler, 8 Car. and P. (Eng.) 616, Reg. *vs.* Duddley, L. R. 14, Q. B. Div. (Eng.) 273.]

We hold, therefore, that defendant Roque Badili by his overt acts specified in counts Nos. 1, 2, 7 and 8 of the amended information, positively proven by the trial beyond reasonable doubt through the testimony of more than two competent witnesses, committed a breach of his allegiance to the United States of America and the Commonwealth of the Philippines which constituted the crime of treason under article 114 of the Revised Penal Code. There can be no complex crime, nevertheless, on the overt act in count No. 8, for there is no conclusive evidence that Lt. Pacifico Rosales was killed by the accused, nor is there a positive proof of his death.

Declaring Roque guilty and responsible for the crime of treason, without any circumstance to modify his penalty fixed by law, this Court sentences him to suffer life imprisonment or *reclusión perpetua,* to pay a fine of ten thousand pesos (₱10,000) and the costs.

It is so ordered.

City of Cebu, April 30, 1946.

F. BORROMEO VELOSO
Associate Judge

I concur:

FLORENTINO SAGUIN
Associate Judge

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

OFFICE OF THE PRESIDENT

Juan Orendain, appointed Public Relations Secretary in the Office of the President, December 23, 1946.

CIVIL AERONAUTICS COMMISSION

Director Jesus Villamor, of the Bureau of Aeronautics, appointed Member of the Civil Aeronautics Commission, December 3, 1946.

JUDGES

Conrado Barrios, appointed, ad interim, Judge of the Ninth Judicial District, First Branch, Manila, December 17, 1946.

Sotero Rodas, appointed, ad interim, Judge of the Ninth Judicial District, Sixth Branch, Manila, December 17, 1946.

Dionisio de Leon, appointed, ad interim, Judge of the Ninth Judicial District, Fourth Branch, Manila, December 17, 1946.

JUSTICES OF THE PEACE

Justices of the Peace appointed, ad interim, December 3, 1946: Venancio Soriano for Peñaranda and Papaya, Nueva Ecija; Cayetano A. Oconer for Bagac and Moron, Bataan.

Justices of the Peace appointed, ad interim, November 21, 1946: Emilio Puruganan, Jr., for Pidigan and Peñarrubia, Abra; Jovito Barreras for Lagangilang and the municipal districts of Licuan, Baay and Malibcong, Abra; Felix M. Cariño for Tayum and Bucay, Abra; Leocadio Lalin for La Pas and Danglas, Abra; Jose Bigornia for Sal-lapadan and the municipal districts of Buclec and Daguioman, Abra; Salvador M. Gayao for Manabo and the municipal districts of Boliney and Danao, Abra.

QUEZON CITY

Ponciano Bernardo, appointed, ad interim, Mayor, Matias C. Defensor, Vice Mayor, and Leon Malubay, Gregorio Roxas and Hipolito Lopez, Councilors of Quezon City, December 23, 1946.

PROVINCES

Albay

Jose Lawengko, appointed Mayor of Bacacay, Albay, November 26, 1946.

Bataan

Buenaventura Linao, appointed Mayor of Moron, Bataan, December 27, 1946.

Silvestre Iraola, appointed Mayor of Mariveles, Bataan, December 27, 1946.

Capiz

Jose R. Prado, appointed Councilor of Buruanga, Capiz, December 3, 1946.

Cebu

Zosimo Osayan, appointed Councilor of Medellin, Cebu, November 26, 1946.

Cotabato

Datu Dotin Ampa Tuan, appointed Mayor, and Datu Kasim Labing, Vice Mayor of Dulawan, Cotabato, November 21, 1946.

Iloilo

Florencio Hisole, appointed Councilor of Pavia, Iloilo, November 27, 1946.

Laguna

Emilio Agira, appointed Councilor of Mabitac, Laguna, November 21, 1946.

Cornelio Oliveros, appointed Councilor of Pagsanjan, Laguna, November 27, 1946.

La Union

Ambrosio Manongdo, appointed Mayor, Leon A. Dulay, Vice Mayor, and Dionisio Balanag, Councilor of Caba, La Union, December 21, 1946.

Mindoro

Lorenzo Fojas and Perfecto Monreal, appointed Councilors of Bongabong, Mindoro, December 20, 1946.

Negros Oriental

Isidoro M. Bautista, appointed Mayor, Teodoro Leoncito, Vice Mayor, and Alejandro Justiniani, Baldomero de los Reyes, Roque Cabataña, Cesario Quirante, Jose Amador and Pascual Viason, Councilors of Canlaon, Negros Oriental, December 18, 1946.

Nueva Ecija

Jose D. Villavisa, appointed Mayor, and Francisco Lodrido, Councilor of Laur, Nueva Ecija, December 21, 1946.

Jose B. David, appointed Mayor of Talavera, Nueva Ecija, November 28, 1946.

Pampanga

Marcelo Duartes, appointed Mayor of Masantol, Pampanga, December 9, 1946.

Pangasinan

Prudencio Jabonilla, appointed Councilor of Urdaneta, Pangasinan, November 30, 1946.

Guillermo E. Visperas, appointed Mayor of Mangaldan, Pangasinan, December 27, 1946.

Elpidio Fernandez, appointed Mayor of Dagupan, Pangasinan, December 31, 1946.

Rizal

Gil E. Fernando, appointed Mayor of Marikina, Rizal, December 1, 1946.

Samar

Gregorio Andoren, appointed Mayor, Jacinto Macawele, Vice Mayor, and Panfilo Pabelonia, Crispin Valdemoro, Luis Lavilla and Victor Terencio, Councilors of Quinapondan, Samar, December 23, 1946.

Tarlac

Carlos Rodriguez, appointed Vice Mayor, and Francisco Santos, Councilor of Tarlac, Tarlac, December 5, 1946.

ORDINANCES OF THE CITY OF MANILA

[ORDINANCE No. 2994]

AN ORDINANCE AMENDING SECTIONS SIX HUNDRED EIGHTY-FIVE AND SIX HUNDRED EIGHTY-SEVEN OF ORDINANCE NUMBERED ONE THOUSAND SIX HUNDRED, KNOWN AS THE REVISED ORDINANCES OF THE CITY OF MANILA, AS AMENDED BY ORDINANCE NUMBERED SIXTEEN HUNDRED AND THIRTY, AND FOR OTHER PURPOSES.

Be it ordained by the Municipal Board of the City of Manila, that:

SECTION 1. Section 685 of Ordinance No. 1600, known as the Revised Ordinances of the City of Manila, is hereby amended to read as follows:

"SEC. 685. *'Lumber yard' defined; classification.*—For the purpose of this Ordinance the term 'lumber yard' shall be construed to include every place where lumber, whether sawn or not, is kept or stored for sale or distribution. There shall be two classes of lumber yard; those which use machinery, whether propelled by steam, electricity, or other motive power, and those which do not use any machinery."

SEC. 2. Section 687 of the said Revised Ordinances as amended by Ordinance No. 1680, is hereby further amended to read as follows:

"SEC. 687. *License fees: Approval of application.*—There shall be paid in advance to the City Treasurer for every license granted for having, keeping, or storing lumber in any yard or operating a lumber yard with machinery (sawmill) the following fees:

Class A—Lumber yard without machinery

A-1 With a yard for the deposit of lumber having a space of more than 1,500 sq. m.	₱600.00
A-2 With a yard for the deposit of lumber having a space of 1,000 sq. m. but not more than 1,500 sq. m.	500.00
A-3 With a yard for the deposit of lumber having a space of 500 sq. m. but less than 1,000 sq. m.	400.00
A-4 With a yard for the deposit of lumber having a space of less than 500 sq. m.	300.00
A-5 Without yard, but with space to keep already sawed lumber and provided with an office for accepting order for lumber only	200.00

These lumber yards shall be subject to license fees according to area as prescribed in Class A, but if a lumber yard is conducted with machinery, an additional license fee shall be collected for each machinery, based on the power rating of each machinery as follows:

Class B—Lumber yard (sawmill) with machinery

B-1 Over 500 horse power	₱1,000.00
B-2 From 201 to 500 horse power	800.00
B-3 From 101 to 200 horse power	600.00
B-4 From 26 to 100 horse power	500.00
B-5 From 15 to 25 horse power	400.00
B-6 From 1 to 14 horse power	300.00"

SEC. 3. *Application.*—It shall be the duty of the owner or manager of a lumber yard or sawmill to file an application to the Office of the Mayor before beginning the business stating the area of the yard or space or premises and the description of the machinery, if any, and the number of horse power: *Provided,* That owners of lumber yard or saw mill operating and already licensed before the enactment of this Ordinance shall file an application as required in this section after the end of the quarter preceding the date of the approval of this Ordinance.

SEC. 4. *Repealing clause.*—Any provisions of Ordinance now in force, inconsistent with this Ordinance, is hereby repealed.

SEC. 5. This Ordinance shall take effect on its approval.

Enacted, December 4, 1946.
Approved, December 14, 1946.

[ODINANCE No. 2995]

AN ORDINANCE IMPOSING LICENSE FEES ON ALL STALLHOLDERS IN THE PUBLIC MARKETS OF THE CITY OF MANILA, AND FOR OTHER PURPOSES.

Be it ordained by the Municipal Board of the City of Manila, that:

SECTION 1. *License.*—No stallholder shall engage or conduct his business in the City public markets without first having obtained a license therefor from the City Treasurer.

SEC. 2. *Classes of markets.*—For the purpose of this Ordinance, the different public markets in the City of Manila are hereby classified as follows:

First class—Divisoria, Quinta, Arranque, and Paco markets.
Second class—Obrero, Bambang, Sampaloc and Tondo markets.
Third class—San Andres, Sta. Ana, Sta. Mesa and Trabajo markets.
Fourth class—Pandacan and Talipapa markets.

SEC. 3. *Fees.*—There shall be paid in advance to the City Treasurer for every license granted under the provisions of this Ordinance an annual license fee as enumerated below:

Item	1st class	2nd class	3rd class	4th class
I—Stallholders selling grocery products, per stall	₱1.50	₱1.00	₱0.50	₱0.20
II—Stallholders selling hog meat, cooked food or refreshment, and sari-sari, per stall	1.50	1.00	.50	.20
III—Stallholders selling cow and carabao meat, sea foods in frozen form, per stall	1.50	1.00	.50	.20
IV—Stallholders selling dried and smoked fish, live fowls, fresh fish, and shrimps, etc., per stall	1.00	.60	.40	.10
V—Stallholders selling vegetables, fruits, rice, toasted coffee beans with grinding machine, sugar and other commodities not specifically enumerated in this Ordinance, per stall	1.00	.60	.40	.10

For the purposes of this section (section 3 hereof) grocery stores shall be those stalls selling grocery products and may keep in said stalls unlimited quantities of grocery articles, while sari-sari store shall be those stalls selling sari-sari articles and may expose for sale grocery products to wit:

Canned foods and bottled soft drinks; bottled pickles, toyo and other kinds of sauce, in quantities of not more than one dozen cans or bottles of each kind.
Imported fruits, in quantities of not more than two dozens of each kind.
Onions, potatoes, fresh grapes, and imported nuts, in quantities of not more than four kilos of each kind.

SEC. 4. *Compliance with rules and regulations.*—Any person holding a license to conduct business on any stall in any public markets of the City shall observe strictly the provisions of the Market Code, Ordinance No. 2898, and shall comply with all the rules and regulations now existing from the date of the promulgation of this Ordinance and other rules and regulations that may be promulgated from time to time.

SEC. 5. *Revocation.*—Any stallholder violating any of the provisions of this Ordinance, those of the Market Code and amendments thereto, as well as other existing rules and regulations governing public markets, shall be sufficient cause for the revocation by the Mayor of the license issued to him and, such license once declared revoked, the privilege granted to him to hold stalls in the public markets shall be considered also automatically revoked.

SEC. 6. *Repeal.*—That part of Ordinance No. 2723, as amended, under "Class E" of section 5 thereof relative to the imposition of sari-sari store located in the city public markets, which is in conflict herewith, is hereby repealed.

SEC. 7. *Effectivity.*—This Ordinance shall take effect upon its approval.

Enacted, December 4, 1946.
Approved, December 16, 1946.

[ORDINANCE NO. 2996]

AN ORDINANCE REGULATING THE PUBLIC USE OF CERTAIN BUILDINGS OR STRUCTURES OR A PORTION THEREOF, INTENDED FOR AMUSEMENT CENTERS AND PROVIDING FOR THE ISSUANCE OF CERTIFICATE OF INSPECTION AND FEES THEREFROM.

Be it ordained by the Municipal Board of the City of Manila, that:

SECTION 1. It shall be unlawful for any person, firm or corporation to use or allow to be used by the public any building or structure or part thereof intended for theatres, cinematographs, stadium, auditorium, gymnasium, grandstands for race tracks and any other amusement or recreation centers

without first obtaining from the City Engineer a certificate to that effect.

SEC. 2. It shall be the duty of the City Engineer to make or cause to be made an annual inspection of the buildings or structures or part thereof as set forth in the preceding section to determine their structural safety and fitness for public use. He shall keep a record of the findings of each inspection made on every building or structure in prepared forms. He shall notify the owner of the said building or structure or his agent five days in advance of the impending inspection. Upon written request of the owner or his agent, the City Engineer, however, may grant a deferment of the date of inspection, but in no case shall it be extended more than 20 days from the date of the original notification.

The City Engineer may require the temporary suspension of the operation of the business therein established during the time of inspection; *Provided, however,* That this suspension shall not last more than 24 hours.

The owner or his agent may also be required to give at his expense all the facilities including labor that the City Engineer may deem necessary for the proper and detailed undertaking of the inspection.

SEC. 3. Should the City Engineer find that the building or structure or part thereof, as hereinbefore provided, to be safe and fitted for public use, he shall issue a written certificate of inspection to that effect.

This certificate must specify the maximum number of persons that may safely be accommodated in the building or structure or part thereof.

SEC. 4. Should the City Engineer or his representative find upon inspection that the building or structure or part thereof to be structurally unsafe and not fit for public use, or should the owner of the building or structure fail or refuse to comply with any of the provisions as set forth in the preceding sections after having been duly notified thereof, it shall be the duty of the City Engineer in either case to advise the Mayor of the existence of such structural defects or the failure or refusal of the owner or his agent as the case may be; and the Mayor shall order the immediate suspension of the public use of such building or structure, which suspension shall remain effective until the owner of the building or structure, or his agent, shall have fully complied with the requirements of this Ordinance.

SEC. 5. Nothing in this Ordinance shall be construed as to prohibit the City Engineer from making or causing to be made at any time such necessary inspection of building or structure referred to in the preceding sections, whenever in his judgment such building or structure or portion thereof has been damaged by any cause to such an extent as to be dangerous for public use.

SEC. 6. The fees for every inspection of cinematographs, theaters, grandstands for race tracks, gymnasiums and other structures or buildings for public or semi-public use shall be as follows:

A—First-class cinematographs or theaters	₱50.00
B—Second-class cinematographs or theaters	40.00
C—Third-class cinematographs or theaters	30.00
D—Grandstands for race tracks	40.00
E—Other public or semi-public building:	
E-1—Buildings with assessed value of ₱50,000 or more	50.00
E-2—Buildings with assessed value ₱30,000 to ₱49,000	40.00
E-3—Buildings with assessed value of ₱15,000 to ₱29,000	30.00
E-4—Buildings with assessed value of ₱15,000	20.00
F-Gymnasiums and other buildings not specifically mentioned herein	20.00

SEC. 7. Any person violating any of the provisions of this Ordinance shall upon conviction be punished thereof by a fine of not more than two hundred pesos or by imprisonment of not more than six months, or both such fine and imprisonment, in the discretion of the court.

SEC. 8. This Ordinance shall take effect upon its approval.

Enacted, December 4, 1946.
Approved, December 17, 1946.

[ORDINANCE NO. 2997]

AN ORDINANCE AMENDING SECTIONS 1, 2, AND 3 OF ORDINANCE NO. 2650 BY PROHIBITING THE ADMISSION OF CHILDREN UNDER SEVEN YEARS OF AGE TO CINEMATOGRAPHS OR THEATERS, AND THOSE UNDER TWELVE YEARS OF AGE TO SIDE SHOWS.

Be it ordained by the Municipal Board of the City of Manila, that:

SECTION 1. Sections 1, 2, and 3 of Ordinance No. 2650 are hereby amended to read as follows:

"SECTION 1. It shall be unlawful for any owner, manager, or person in charge of any cinematograph, theater, or side show to permit the admission of any child under 7 years of age to such cinematograph or theater, and any child under 12 years of age to such side show during performances.

"SEC. 2. Any violation of this Ordinance shall be punished by a fine of not more than one hundred pesos or by imprisonment of not less than ten days nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court.

"SEC. 3. A fourth or subsequent conviction of the owner, manager, or person in charge of any cinematograph, theater, or side show for a violation of this Ordinance shall constitute a sufficient ground for the suspension or revocation of the license or permit to operate such cinematograph, theater, or side show."

SEC. 2. This Ordinance shall take effect upon its approval.

Enacted, December 6, 1946.
Approved, December 18, 1946.

[ORDINANCE No. 2998]

AN ORDINANCE AMENDING SECTIONS 1, 2, 3, 4, 5, 6, 7 AND 8 OF ORDINANCE NO. 2950, CREATING A COMMISSION TO BE KNOWN AS COÖRDINATING COUNCIL BY CHANGING THE NAME OF THE COUNCIL TO THAT OF "COUNCIL FOR JUVENILE DELINQUENCY," AND MAKING THE MAYOR OF THE CITY OF MANILA THE CHAIRMAN OF THE COUNCIL INSTEAD OF BY ELECTION OF THE MEMBERS THEREOF, AND FOR OTHER PURPOSES.

Be it ordained by the Municipal Board of the City of Manila, that:

SECTION 1. Sections 1, 2, 3, 4, 5, 6, 7 and 8 of Ordinance No. 2950, are hereby amended to read as follows:

"SEC. 1. There is hereby created a Council for Juvenile Delinquency which shall consist of the Chief of Police, the City Fiscal, the Judge of the Municipal Court designated to hear juvenile cases, the Superintendent of City Schools, the City Health Officer, the Chairman of the following Committees of the Municipal Board: Health and Social Service; Laws; Labor and Public Welfare; Police and Schools, as regular members; and nine additional members who are to be appointed by the Mayor and who are not at the time of their appointment by the Mayor officials or employees of the City of Manila, and who shall be qualified to serve by reason of their knowledge and experience in the coördinating of the youth activities.

"SEC. 2. Subject to the provisions of the Civil Service Law, a Secretary and such additional employees as may be necessary to conduct the affairs of said Council for Juvenile Delinquency shall be appointed by the Mayor.

"SEC. 3. Upon recommendation of the Mayor and with the approval of the Municipal Board, an amount not to exceed ₱10,000 shall be appropriated each year to said Council for Juvenile Delinquency for the purpose of defraying the cost of carrying on its work, which cost shall include salaries and other expenses incident to the work.

"SEC. 4. The duty of said Council for Juvenile Delinquency shall be to work towards a more efficient coördination and coöperation among the public departments and between the public departments and social agencies in establishing and carrying out an effective program for the welfare and improvement of the youth of Manila.

"Said Council for Juvenile Delinquency shall meet at least once during each month and said body shall specify a regular time and place for said meeting. The Council for Juvenile Delinquency may hold such additional regular or special meetings as it may provide; said meetings to be called and held in accordance with the provisions of the rules and regulations or by-laws that the Council may from time to time adopt.

"SEC. 5. A majority of the membership of said Council for Juvenile Delinquency shall constitute a quorum."

"SEC. 6. The Mayor of Manila shall be the Chairman of the Council for Juvenile Deliquency. In the event of the Mayor's absence, resignation or death, the Acting Mayor shall act as Chairman of said Council. The Council shall have authority to establish district councils and to determine the membership thereof in such manner as they deem best, and said district councils shall, insofar as their own districts are concerned, organize and carry out the work outline in the duties of said Council for Juvenile Delinquency, but under the control and direction of the Council for Juvenile Delinquency.

"SEC. 7. Said Council for Juvenile Delinquency shall have full power and authority to adopt such rules and regulations not in conflict with the provisions of the Charter of the City of Manila or of

the City ordinances as may be necessary for the conduct of its work.

"SEC. 8. Whenever any of the officials of the City of Manila who are regular members of the Council for Juvenile Delinquency shall cease to hold their official positions as such officers, then in that event, their membership in said Council for Juvenile Delinquency shall cease and their respective successors shall be appointed to succeed them as members of said Council."

SEC. 2. This Ordinance shall take effect on its approval.

Enacted, December 6, 1946.
Approved, December 20, 1946.

[ORDINANCE No. 2999]

AN ORDINANCE AMENDING SECTIONS SIX HUNDRED FIFTY-FIVE AND SIX HUNDRED FIFTY-SEVEN OF ORDINANCE NUMBERED ONE THOUSAND SIX HUNDRED, KNOWN AS THE REVISED ORDINANCES OF THE CITY OF MANILA, RELATIVE TO THE LICENSES AND FEES OF HAWKERS, PEDDLERS, OR HUCKSTERS.

Be it ordained by the Municipal Board of the City of Manila, that:

SECTION 1. Section 655 of Ordinance No. 1600, known as the Revised Ordinances of the City of Manila, is hereby amended to read as follows:

"SEC. 655. *License; exemption; definition.*—No person shall conduct or engage in the business or calling of a hawker, peddler, or huckster whose articles or merchandise are carried by truck, automobile, or other kinds of motor vehicles or vehicle drawn by animals, bicycle or tricycle or carried by person, without first having obtained a license therefor: *Provided*, That this chapter shall not apply to peddlers or hucksters who sell only native vegetables, fruits, or goods, personally carried by the peddlers or hucksters."

"For the purpose of this Ordinance, peddlers, hawkers, sucksters, are those persons who deliver their merchandise, goods, wares, soft drinks, and other similar products within the City of Manila as prescribed in section 657 hereof."

SEC. 2. Section 657 of said Ordinance No. 1600, as amended, is hereby further amended to read as follows:

"SEC. 657. *Fees.*—There shall be paid for every license granted to hawker, peddler, or huckster, as in this chapter provided a quarterly license as follows:

	Quarterly fees
"Class A—Peddlers of articles or merchandise manufactured outside of the City of Manila carried in trucks, automobiles, or any other motor vehicles for delivery or peddling within the city limits	₱25.00
"Class B—Peddlers of articles or merchandise or cooked food carried in a truck or any motor vehicle other than those specified in Class A	12.00
"Class C—Peddlers of articles or merchandise in cart, carretela or other vehicles drawn by animals	6.00
"Class D—Peddlers of articles or any merchandise carried on bicycle, tricycle or other similar carrier	2.50
"Class E—Peddlers of articles or merchandise carried by person	1.00

"*Provided*, That in case peddlers and vendors shall sell or offer for sale any fresh meats or fresh fish or cooked food or drink, they shall secure a permit from the City Health Officer before engaging in the business."

SEC. 3. *Repealing clause.*—Any provision of ordinance now in force or part thereof inconsistent with the provisions of this Ordinance are hereby repealed.

SEC. 4. This Ordinance shall take effect upon its approval.

Enacted, December 14, 1946.
Approved, December 23, 1946.

[ORDINANCE No. 3000]

AN ORDINANCE REQUIRING PERMIT ON ALL BUSINESSES, TRADES OR OCCUPATIONS; PRESCRIBING FEES THEREFOR; AND FOR OTHER PURPOSES.

Be it ordained by the Municipal Board of the City of Manila, that:

SECTION 1. *Permits necessary.*—It shall be unlawful for any person or entity to conduct or engage in any of the businesses, trades or occupations enumerated in section 3 of this Ordinance or other businesses, trades, or occupations for which a permit is required for the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security and welfare of the public and the health of the employees engaged in the businesses specified in said section 3 hereof, without first having obtained

a permit therefor from the Mayor and the necessary license from the City Treasurer.

SEC. 2. *Application, contents of: false statements.*—A written application on the form prescribed for the purpose shall be made by the applicant, owner, manager or agent, to the Mayor, through the City Treasurer, except for hawkers, hucksters, peddlers, fortune tellers, acrobats, horse races, and the keeping of dogs. Said application shall set forth the name and the location of the business, trade or occupation to be engaged in, the address of the applicant, the nature or description of such business, trade or occupation, and such other information as may be required by the Mayor. The application for permit shall be deemed an application for license at the same time, where such license is required. If an applicant shall make any false statement in regard to his business, trade or occupation with intent thereby to procure a license at a lesser rate than that prescribed for his particular business, trade or occupation, he may be prosecuted therefor, and in addition his license and permit may be revoked by the Mayor.

SEC. 3. *Fees.*—There shall be paid to the City Treasurer for every permit issued by the Mayor for the businesses, trades or occupations hereinbelow enumerated, as in this Ordinance provided, an annual fee in accordance with the following schedule:

	Annual fee
1. Candle or soap factory—	
A—With machinery	₱20.00
B—Without machinery	15.00
2. Manufacture of paint, paste, ink, dyes and other similar products:	
A—With machinery	15.00
B—Without machinery	5.00
3. Manufacture of Coconut Oil:	
A—With five expellers or more	20.00
B—With less than five expellers	15.00
C—Manufacture of other kinds of oil	10.00
4. Manufacture of lard or boiling fat, butter sauce, sausages, hot dog, baloney and other kinds of similar products:	
A—With machinery	15.00
B—Without machinery	8.00
5. Manufacture of coffee or chocolate, candies, sweets and other similar products:	
A—With machinery	10.00
B—Without machinery	5.00
6. Ice-cream or ice-drop factory:	
A—With machinery	20.00
B—Without machinery	10.00
7. Dry or curing fish	5.00
8. Tanneries	15.00
9. Ice Factory	20.00
10. Assaying laboratories	10.00
11. Manufacture of pharmaceutical products:	
A—With machinery or boiler	12.00
B—Without machinery	6.00
12. Manufacture of perfumeries or lotion, bayrums, hair tonics, hair pomades, lipsticks, consmetics and other similar products:	
A—With machinery	10.00
B—Without machinery	5.00
13. Manufacture of batteries for motor vehicles, charging and recharging batterics	10.00
14. Manufacture of Hoon Lights	10.00
15. Carpentry shops, manufacture of wooden boxes:	
A—With machinery	20.00
B—Without machinery	10.00
16. Manufacture of and repair of shoes:	
A—With machinery	25.00
B—Without machinery	5.00
17. Manufacture of matresscs:	
A—With bed factory connection	20.00
B—Without bed factory connection	10.00
18. Manufacture of bed, all kinds:	
A—With machinery	15.00
B—Without machinery	5.00
19. Manufacture and repair of vehicles drawn by animals:	
A—With machinery	15.00
B—Without machinery	5.00
20. Establishment for the construction and repair of bodies of motor vehicles:	
A—With machinery installation	10.00
B—Without machinery installation	5.00
21. Establishment for the repair of motor vehicles:	
A—With an area of more than 1,000 sq. m.	20.00
B—With an area of more than 500 sq. m. but not exceeding 1,000 sq. m.	15.00
C—With an area of 500 sq. m. or less	10.00
22. Blacksmith shops:	
A—With machinery apparatus and forges	30.00
B—Without machinery, but with forge	15.00
23. Machine shop establishments for manufacturing or repairing parts of mechanical apparatus or engines or	

	Annual fee
manufacturing any kind of articles made of brass:	
A—With more than 10 lathes	30.00
B—With lathes not exceeding 10	25.00
C—With lathes not exceeding 6	20.00
D—With lathes not exceeding 3	15.00
E—With lathes not exceeding 2	10.00
F—With one lathe	5.00
G—Without lathe	3.00
24. Repair shops for pianos, auto-pianos, radios, phonographs, typewriters, mimeographs, and other similar apparatus:	
A—With machinery	13.00
B—Without machinery	8.00
25. Foundries of iron or bronze:	
A—Founding 5 or more tons a day	30.00
B—Founding less than five tons a day	15.00
26. Welding shops:	
A—With machinery moved by electricity	20.00
B—With machinery moved by hand or manpower	10.00
27. Lithographer or engraver:	
A—With machinery	12.00
B—Without machinery	6.00
28. Tinsmiths:	
A—With machinery	10.00
B—Without machinery	5.00
29. Photo engravers	10.00
30. Photo studios or establishments:	
A—With one gallery or more with one or more photo camera and with photographic enlargement	10.00
B—With one gallery and one photo camera	5.00
31. Manufacture of matches	25.00
32. General repair of articles of iron, brass, etc.:	
A—With machinery	10.00
B—Without machinery	5.00
33. Restaurants, panciterias, cafes and cafeterias, carinderias or any other public eating places:	
A—Restaurants or panciterias with 50 seating capacities or more	20.00
B—Restaurants or panciterias with less than 50 seating capacity	15.00
C—Cafes and cafeterias	10.00
D—Carinderias with 20 or more seating capacity	10.00
E—Carinderias with less than 20 seating capacity	5.00
34. Refreshment parlors:	
A—With 20 or more seating capacities	10.00
B—With less than 20 seating capacities	5.00
35. Hotels or lodging houses:	
A—With 20 or more rooms	20.00
B—With less than 20 rooms	15.00
36. Sari-sari stores:	
A—Those located on the corner of two streets	10.00
B—Those located between corner streets	6.00
C—Those located in interior	3.00
37. Manufacture of aerated water or soft drinks:	
A—With over 4 corking machines	10.00
B—With 3 to 4 corking machines	8.00
C—With 1 to 2 corking machines	5.00
38. Storage of Alcohol	20.00
39. Barber shops:	
A-1—Those having 10 or more mechanical chairs	8.00
A-2—Those having 5 to 9 mechanical chairs	4.00
A-3—Those having less than 5 chanical chairs	2.00
B—Those having one ordinary chair and for location	3.00
B-1—For each ordinary chair	1.00
40. Hardware stores:	
A—Those located in the following streets: Rizal Ave., Quezon Blvd., Azcarraga, Rosario, Escolta, Villalobos, Carriedo, Echague, Plaza Miranda, Plaza Sta. Cruz, Plaza Goiti, Gandara, Sto. Cristo, Elcano and Juan Luna from Plaza Calderon de la Barca to Azcarraga	20.00
B—Those located on the following streets: R. Hidalgo, Legarda, Bustillos, Dart, Herran, Evangelista, Ronquillo, Blumentritt, Marcelino de Santos, Elcano, Jaboneros, Sto. Cristo, Raon, España	10.00
C—Other places not enumerated in A & B	5.00
41. Billiard and pool halls:	
A—With 2 tables or more	8.00
B—With 1 table	4.00
42. Boarding house:	
A—For 50 boarders or more	8.00
B—For 20 but less than 50 boarders	6.00
C—Less than 20 boarders	4.00

	Annual fee
43. Manufacture of boxes out of second hand lumber or materials:	
A—With machinery	15.00
B—Without machinery	10.00
44. Manufacture of cigar boxes and other similar boxes:	
A—Cigar boxes and other similar boxes	10.00
B—Boxes made of papers, cardboard, bamboos or similar materials	5.00
45. Bowling alleys:	
A—Over 70 feet long per alley	5.00
B—From 43 to 70 feet long per alley	3.00
C—Shorter than 43 feet long	2.00
46. Boxing contests:	
A—For more than 4,000 persons capacity	10.00
B—Less than 4,000 persons capacity	6.00
47. Manufacture of bricks, tiles, and other similar products:	
A—With machinery for each press	10.00
B—Without machinery for each press	5.00
48. Storage of calcium carbide:	
A—100 cases or more	15.00
B—50 cases but not exceeding 99 cases	10.00
C—Less than 50 cases	5.00
49. Storage of celluloid:	
A—10 kilos or more	10.00
B—Less than 10 kilos	5.00
50. Night clubs:	
A—Those conducted with hotel, lodging house or with regular restaurant, cafe or refreshment parlor	20.00
B—Night club only	10.00
51. Coal deposits:	
A—Over 100 tons	20.00
B—Less than 100 tons	10.00
52. Cold Storage:	
A—With a total capacity of 50 cu. m. or more capacity	20.00
B—With a total capacity for less than 50 cu. m. capacity but not less than 35 cu. m.	15.00
C—With a total capacity for less than 35 cu. m. but not less than 15 cu. m.	10.00
D—With a total capacity for less than 15 cu. m. but not less than 5 cu. m.	7.50
E—With a total capacity for less than 5 cu. m.	5.00
F—Refrigerating cases with 4 cu. m. capacity or more	3.00

	Annual fee
53. Motor fuel (storage):	
A—10 gallons but not exceeding 1,000 gallons	10.00
B—Over 1,000 gallons	15.00
54. Gasoline, petroleum or other similar products:	
A—10 to 200 gallons	5.00
B—201 to 1,000 gallons	10.00
C—1,001 to 5,000 gallons	15.00
D—5,001 to 50,000 gallons	20.00
E—Over 50,000 gallons	25.00
55. Theatres or cinematographs:	
A—First class	20.00
B—Second class	15.00
C—Third class	10.00
56. Distillery or rectifier	25.00
57. Cinematographs film storage:	
A—2,000 kilos or more	25.00
B—500 kilos but not more than 2,000 kilos	20.00
C—Less than 500 kilos	15.00
58. Other combustible materials storage:	
A—Over 5,000 kilos	20.00
B—Tar, 3,000 kilos to 5,000 kilos	15.00
C—Tar, 1,000 but not exceeding more than 2,999 kilos	10.00
D—Less than 1,000 kilos	5.00
E—Resin over 5,000 kilos	20.00
F—Resin 3,000 kilos to 5,000 kilos	15.00
G—Resin 1,000 kilos to 2,999 kilos	10.00
H—Less than 1,000 kilos	5.00
59. Second hand dealers:	
A—Automobile spare parts	10.00
B—Furniture and household goods	5.00
60. Grocery stores:	
A—Around Plaza Sta. Cruz, Plaza Goiti, Plaza Miranda, Rizal Avenue from Echague to Azcarraga, Villalobos, Echague, Quezon Blvd. from Echague to Azcarraga, Dasmariñas, Carriedo, Evangelista, Ronquillo, Raon, P. Gomez, M. de Santos, Tabora, Elcano, Azcarraga from Evangelista to Asuncion, and within a radius of 200 meters from Divisoria and Quinta Markets	20.00
B—Rizal Avenue from Azcarraga to Blumentritt, Dart, Herran, Legarda, Bustillos, Blumentritt and Herbosa	15.00
C—Other places not mentioned in letters A and B, item 68 hereof	10.00

	Annual fee
61. Dealers in automobile, motor cars, trucks of all kinds, jeeps or jitneys, other kinds of motor vehicle or accessories and spare parts:	
A—Dealers in new motor vehicles or accessories	20.00
B—Dealers in second hand motor vehicles	15.00
62. Establishment for repair of motor vehicles:	
A—Those having a space of more than 700 sq. m.	15.00
B—Those having space of 300 sq. m. but not exceeding 700 sp. m.	10.00
C—Those having 200 sq. m. space but not exceeding 299 sq. m.	5.00
D—Those having space of less than 200 sq. m.	2.00
63. Bakeries:	
A—Those having 4 ovens or more	20.00
B—Those having 2 to 3 ovens	15.00
C—Those having 1 oven	10.00
64. Clubs:	
A—Furnishing lodging, food and alcoholic or intoxicating drinks to their members	20.00
B—Furnishing alcoholic or intoxicating drinks but no food and lodging	15.00
65. Lumber Yards:	
Class A—Without machinery:	
A-1—With a yard for the deposit of lumber having a space of more than 1,500 sq. m.	20.00
A-2—With a yard for the deposit of lumber having a space of 1,000 sq. m. but not more than 1,500 sq. m.	15.00
A-3—With a yard for the deposit of lumber having a space of 500 sq. m. but less than 1,000 sq. m.	12.00
A-4—With a yard for the deposit of lumber having a space of less than 500 sq. m.	10.00
A-5—Without yard, but with space to keep already sawed lumber and provided with an office for accepting order for lumber only	5.00
Class B—Lumber yard (sawmill) with machinery:	
B-1—Over 500 horse power	25.00
B-2—From 201 to 500 horse power	20.00
B-3—From 101 to 200 horse power	18.00
B-4—From 26 to 100 horse power	15.00
B-5—From 15 to 25 horse power	12.00
B-6—From 1 to 14 horse power	10.00

	Annual fee
66. Undertakers:	
A—With embalming establishments and depositing corpsos	15.00
B—Rendering funeral services only	10.00
67. Pawnbrokers:	
A—Having a capital of more than ₱200,000	20.00
B—Having a capital of ₱100,000 or more but not exceeding ₱200,000	15.00
C—Having a capital of ₱50,000 or more but less than ₱100,000	10.00
D—Having a capital of less than ₱50,000	5.00
68. Manufacture or sale of rattan chairs, etc.:	
A—With machinery	15.00
B—Without machinery	10.00
69. Manufacture of Mirrors and Art Glasswares:	
A—With machinery	20.00
B—Without machinery	15.00
70. Factory manufacturing playing cards	20.00
71. Printing shops	10.00
72. Manufacture of Bagoong	10.00
73. Laundry establishment using machines for washing clothes	10.00
74. Manufacture of eye glasses:	
A—With machinery	10.00
B—Without machinery	5.00
75. Manufacture of floor wax	10.00
76. Manufacture of miki, bijon, misua and other kinds of similar products	10.00
77. Warehouses:	
A—With an area over 1,000 sq. meters	20.00
B—With an area of from 500 to 1,000 sq. m.	15.00
C—With an area of less than 500 sq. m.	10.00
78. Beauty parlor or shop:	
A—Having 12 or more operators	10.00
B—Having 5 to 11 operators	7.00
C—Having less than 5 operators	5.00
79. All other businesses, trades or occupations not mentioned in this Ordinance, except those upon which the City is not empowered to license or to tax	5.00

Provided, That permits issued after June 30 of each year shall be charged for at fifty per centum of the prescribed annual rates: *Provided, further*, That nothing herein shall be construed as abrogating or repealing the provisions of other ordinances prescribing license fees for the operation of any business or the exercise of any trade or occupation, or for the inspection of machinery or other equipment: *Provided, finally*, That in case of change of owner-

ship or location of business, it shall be the duty of the owner, agent or manager of such business to secure a new permit and any the corresponding permit fee as in the case of a new business.

SEC. 4. *Term of permits.*—Permits shall be granted for a period of not more than one year and shall expire on the 31st day of December next following the date of issuance thereof.

SEC. 5. *Renewal of permits.*—Every permit shall be renewed within the first twenty-five days of January following its expiration.

SEC. 6. *Permits for existing businesses, trades or occupations.*—All persons or firms now licensed to operate businesses, trades or occupations subject to permits as provided in section 3 hereof shall file applications for such permit as provided in section 2 of this Ordinance not later than January 25, 1947.

SEC. 7. *Penalties.*—Any violation of this Ordinance shall be punished by a fine of not more than two hundred pesos or by imprisonment for not more than six months, or both such fine or imprisonment in the discretion of the court. If the violation is committed by a firm or corporation, the manager, or managing director or person charged with the management of the business of such firm or corporation shall be criminally responsible therefor: *Provided*, That failure to renew a permit within the period prescribed in section 6 of this Ordinance shall be subject to a penalty of five pesos, which shall be payable in the same manner and at the same time as the regular permit fee.

SEC. 8. *Repeal.*—All Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed or modified accordingly.

SEC. 9. *Effectivity.*—This Ordinance shall take effect on January 1, 1947.

Enacted, December 21, 1946.

Approved, January 6, 1947.

HISTORICAL PAPERS AND DOCUMENTS

FOLLOWING ARE THE CHRISTMAS MESSAGES OF PRESIDENT MANUEL ROXAS AND VICE PRESIDENT ELPIDIO QUIRINO:

The President's message:

Christmas comes again this year with its magic aura of cheer and gladness. Its ancient message of peace and goodwill evokes a welcome response in the eager and yearning hearts of men everywhere. Peace, following the years of strife, has become the one great passion of war-weary mankind.

In the universal search for peace and the good life, the spirit that infuses men, women and children, young and old, rich and poor, on Christmas Day, should light the way. True Christian fellowship, brotherhood, goodwill and kindness—these are Christmas. And these—not arrogance, nor selfishness, nor greed, nor conceit, nor avarice—can lead humanity to its long-cherished goal of peace and happiness.

I wish our people the Merriest Christmas and a truly happy New Year. May the spirit of the season linger long in all hearts and homes.

The Vice President's message:

Christmas comes to us this year without the bountiful plenty of the days before the war. Our ravaged and looted country has not yet recovered the prosperity to which we were long accustomed, and even that peace and general goodwill which is the traditional atmosphere of this holiday have not yet been re-established.

It may happen therefore that many of us will not feel like Christmas. It may seem to us that Christmas without rich presents, without lavish and brilliant entertainments, without elegant clothes and costly jewelry, is not like Christmas at all.

But it seems to me that it is precisely without these trimmings of wealth and ostentation that we can best appreciate the spirit of Christmas. The first and truest Christmas was celebrated in a stable amid such bare abandonment and poverty that the newly born Babe of Bethlehem was cradled in a manger of the beasts of the field.

If we are poor today, the Child Jesus was even poorer, poor beyond our imagination. If we are harassed and neglected, He too was denied shelter in every human habitation.

But the glory of that first Christmas reached the hearts of the world. The shepherds came and placed gifts from their flocks at the foot of the manger. The kings fol-

lowed the star from the East, bearing gold, frankincense, and myrrh. They shared their wealth and their poverty alike with the Child who had come down to share their humanity.

That is the true message of Christmas; its wealth is not of this world but of the spirit; its true glory shines from the hearts of men of goodwill.

This year the Christmas message has a special significance for our people. For we too find ourselves in poverty and want; we too need a free and generous sharing with our neighbors and our countrymen.

Christmas does not depend on material circumstances; Christmas is what we ourselves make it. Let us make it a good, a happy Christmas, laying aside hatred and intolerance for peace and goodwill, forsaking envy and selfishness for a sincere love of our fellowman.

Yesterday afternoon I looked down from the window of my office in Malacañan on a sight that embodied all that I have said. All of the spacious lawn was filled with the children of the poor, orphans, and waifs, chattering and laughing gaily in the sunshine while the greatest ladies of the land, led by the First Lady of them all, Mrs. Manuel Roxas, distributed among them gifts to make it a real Christmas for the forgotten and the dispossessed.

It was not the first time it had happened in Malacañan but I could not look upon the sight without a sincere thrill of happiness. For this was the true spirit of Christmas, a spirit of sharing, a spirit of human fellowship. Let us fill ourselves with the same spirit and I am sure that we shall find riches and happiness greater than we could ever find in material prosperity alone.

A merry and a holy Christmas to all of you!

At the memorial services held at the Luneta in the morning of December 30, 1946, on the occasion of the 50th anniversary of the death of Dr. Jose Rizal, President Roxas delivered the following speech:

On this hallowed spot, scene of tragedy and glory, we hail the immortal spirit of Jose Rizal. Fifty years ago today this patriot sage joined the ranks of liberty's martyrs. Fifty years ago, the brilliant flame of his life was violently snuffed out by imperial minions who did not comprehend the truth that men may be killed, but ideas are indestructible.

On this same spot, six months ago, our nation became a free Republic. That monumental event Rizal foresaw. It was fitting that the symbolic ceremonial of independence should have been performed on the ground consecrated by the blood of the great leader and prophet.

It is not without significance that Rizal, peering into the inscrutable mists of the future, predicted that one day the American Republic, in his time still untested as a world power, would play a major rôle in the history of his homeland. True to his prophesy, it was America who bestowed the boon of freedom, Rizal's greatest dream, upon the people and land he loved so well.

In the half century since his death, Rizal has dominated our national consciousness more completely than any other figure of our history. We pay our tributes to a long and swelling rank of heroes from Gat Pulintang to Bonifacio to Abad Santos and Quezon, but Rizal towers over them all, as he inspired all who came after him.

Distilled from a turbulent ever-searching spirit, Rizal's writings whether in prose or in verse, are lyric truths, sounding every note of our national character, our national dreams, our national needs. He did not neglect to touch, nor to examine the frailties and faults of his countrymen. Who among us will not still wince at some of the truths which shine forth undimmed from the immortal pages of *Noli Me Tangere?* Who will not still quail and blush at his diatribes against the proneness of some of our people to place conceit and dignity above our nation's good?

In a major measure, his words are as true today when they were written. They express a basic fault of our national character and underlie many of our vexing problems. Yet Rizal understood with crystal clarity, and exalted in immemorable prose and verse, our national glories, the shining virtues of our race . . . the courage, the loyalty, the patience, the tenacity and endurance . . . the love of music and the love of noble glory, the sensitivity and the innate graciousness of our people.

His philosophic understanding of the problems of his day, and of the problems of the generations that were to come after him are profound and prophetic. He examined, with fierce and pitiless disinterest, all the axioms and assumptions of his time. Those he found false in the glaring light of fact and experience he rejected and stripped of sanctity. With equal fervor he embraced the great ethical concepts of Liberalism and Humanity, the concepts of Mankind's Greatest Martyr, Jesus Christ. Human dignity and individual worth . . . human equality before God and Government . . . those were the revolutionary banners carried by Jose Rizal.

The proposition of racial superiority Rizal abhorred and confounded. The corollary that some men are made to rule and others to be enslaved he denounced with acidic irony. As to the gross apology of the Spanish rulers, who claimed superior rights over Filipinos because the latter

were brown skinned and wide of nostril, Rizal thundered, "Law knows no color of skin, nor does reason differentiate between nostrils." That was blasphemy in his day. Rizal dared to blaspheme. He feared neither King nor clergy. He was first to acknowledge the reasonable authority of government; but he would neither bend the knee nor bow his head to what he called "the false pretensions and petty persecutions of sham gods." He sharply attacked the shibboleths of "prestige" and of "face." "The prestige of a nation," Rizal wrote, "is preferable to that of a few individuals."

Heroically he demanded a free press, and assaulted every reason put forward against it. With his mind and heart full of the liberal traditions of the western world, Rizal clamored for a removal of the iron restraints on freedom of thought and expression imposed by petty tyrants who greatly feared the light of truth and knowledge. Solemnly, he warned the colonial rulers . . . "History shows that uprising and revolutions have always occurred in countries where tyranny rules, in countries where human thought and the human heart have been forced to remain silent." It is in his tradition, which is also the tradition of Voltaire and Peter Zenger and Thomas Paine, that we maintain today and will defend with all our vigor full freedom of mind and speech. That is the essential distinction, the touchestone which Rizal well knew, spelling the difference between dictatorship and democracy, between freedom and slavery. Where men are free to speak their minds, to air their dreams, to petition their government, to assemble peacefully, to discuss their grievances, fancied or real . . . there true freedom dwells. Where these rights are not implicit, and are not guaranteed to the people, that is not freedom's realm, whatever the name, whatever the form.

Jose Rizal was not an advocate of revolution nor of violence. Yet in the absence of essential reforms, he clearly saw the inevitability of revolution and uprising. Because he understood this alternative and stated his belief without subterfuge or evasion, he was pilloried, exiled, persecuted, tortured, and then destroyed. This great mind recognized that education and peaceful progress toward the lofty goals of freedom are preferable to strife, death, and bloodshed. But when the light of truth was arrogantly challenged, when men were refused the right to worship God in a manner of their own choosing, when his countrymen were denied the opportunity to learn and to be taught, when official injustice and cruelty went unchecked and unpunished, when he perceived the gathering storms of hate and fury in the hearts of his people, he issued a clear and certain warning, documented by history, that liberty would prevail in the end against tyranny.

Rizal found his country prostrated, exploited and oppressed, its mind and soul smothered by polical intolerance and religious bigotry. He endeavored to lift up the spirit of the common man and make him aware of his dignity. He taught his countrymen their rights as well as their obligations. He tore from their eyes the veil of impotence, and showed them, with measured logic, that a people united against oppression, is irresistible; and that there is no punitive power sufficiently great to keep forever chained an aroused nation armed with a love of liberty and justice.

Rizal struck the shackles from the people's minds; he led them to the realms of unfettered thought. Freedom and justice were depicted by Rizal as the noblest aspiration of a nation. With skilled and steady hands, unshaken by fear of reprisal, Jose Rizal forged the solidarity of our people. He scourged with bitter invective the petty divisions of province against province which permitted the masters to rule by setting one group against another. Not his province, but his country, "gem of the Orient Sea," he said, was inhabited by one people, one nation, a nation which he acclaimed as indestructible by tyranny or terror.

"Dream of my life, my living and burning desire,
All hail," he cried.
"And sweet it is, for thee to expire,
"To die for thy sake, that thou may'st aspire."

Those flaming words fused the soul of the Filipino people. By their passion and beauty, Rizal's farewell verses became a seal of brotherhood by which the Filipinos recognized their affinity, one with another; the land from an archipelago, became a nation.

This poet, statesman, dreamer-seer held high the torch of freedom when the night was darkest. When some despaired of liberation, confronted with the entrenched power and might of Imperial Spain, Rizal fastened his smiling hopes upon his nation's youth, turning to those who still today hold the promise of our future glories.

"Hold high the brow serene, O youth
Where now you stand.
Let the bright sheen
Of your grace be seen,
Fair hope of my fatherland."

A youth himself, he died, his golden pen laid to rest, his restless intellect destroyed, his brilliant talents suspended at their full. But they killed only Rizal's body. They found out too late that his unvanquished spirit led his people on.

The poet Cecilio Apostol, spoke thus to the martyred Rizal:

"Your brain was stilled by a bullet's thrust,
But your spirit soars o'er an empire's dust."

Jose Rizal sealed with his young life our compact with destiny.

Whatever our difficulties today, however impoverished we are by war, we are rich in our heritage of Rizal's patriotism and wisdom. It is a constant spur to our national endeavors to merit, in our daily lives, our claim to his sacrifice.

There are no better guides to national glory and worth than the precepts which this great soul set forth for our people. He distilled them from his deep knowledge of our past and his bright hopes for our future. We would do well to steep ourselves in the wisdom he taught us. I am not one of those who would mortgage the living future to the claims of the dead past. Yet in Rizal, we have a man whose wisdom was universal, whose thoughts were true not only for his time, but for ours. There are few geniuses of any age of whom that can be truly said.

William Tell, hero of Switzerland, died a soldier's death, but he left no living truths to guide his country across the future years. Napoleon was a winner of battles and even a giver of laws, but he did not give lasting inspiration to his country, nor was he a prophet of peace. Savonarola died for his beliefs, but his was a martyrdom of faith rather than of patriotism. England has had her great statesmen and soldiers, but no single one of them combined the vaulting love of his people with the transcendental wisdom which gives Rizal his eternal fame. The only parallel of history who comes immediately to mind is that patient, brooding spirit, Abraham Lincoln, like Rizal, a martyr to human freedom.

Today we need men of Rizal's mold. The cause of liberty cries for new recruits. The heavy hand of oppression casts its shadow over much of the earth. A new philosophy opposes our own, one which would substitute the promise of bread for the reality of freedom. While proposing to free men from economic thralldom, it imposes upon them a mental serfdom, an intellectual regimentation which denies selection and inquiry.

Economic injustice and oppression are hateful and destructive of the individual. Freedom from want and freedom from economic slavery must be achieved. We must never rest until we have established the opportunity of all men to live in comfort and security. But must we, to gain our ends, place our necks in the yoke of dictatorship, whatever its excuses? Must we accept the tablets of law and wisdom from self-anointed leaders claiming to represent a single economic class and imprison our minds and our children's minds in hoops of sacrosanct doctrine? That is too heavy a price for the promise of economic

equality. Power is too intoxicating a wine to be entrusted, without the people's check, to a single party or oligarchy, or despot.

No, we will work in the pervading light of day, and expose our intellectual wares in the free market-place of democracy, and let the people choose. When they have chosen, we will use the powers of constitutional government, with unstinted vigor, to lead the people to security and prosperity. But the people must be free to approve or reject their leaders, after the constitutional term of stewardship, and to express their views, through the press and other media, to compel officials of high or low rank to answer for their deeds in the public plaza of free sentiment, freely expressed.

That is our credo, that is our basic principle. That is the teaching of Jose Rizal. He was no absolutist. He did not fight and die to substitute a Filipino master for the Spaniard. He was full of trust in the basic wisdom of his people. A people have the government that they deserve, he said. Through education and the spread of knowledge, through full and free inquiry into ideologies and beliefs, through public discussion and debate, truth is established; men are made free. He hated tyranny. But tyranny he knew, is possible for any length of time only when there are men who will accept tyranny. "There can be no tyrants without slaves," was his injunction to his people. And today in the Philippines, there can be no tyrants, because there are none who would accept slavery or oppression.

As long as we love freedom, we shall honor Rizal. When this nation turns its back upon liberty, and chooses the degrading road of dictatorship, we shall have to exalt another hero, certainly not Rizal, the Apostle of liberty's sacred creed.

How happy and proud we can be as we say to him today: Your faith has been vindicated; your dreams have come true. The seeds of liberty you showed flower everywhere in your native land. Here democracy rules. Here the voice of the people prevails. Here freedom reigns. And it will ever be so. Here freedom will abide, protected and defended by your countrymen who, in unshakeable loyalty to your memory, cannot conceive of life without liberty.

How can we be sufficiently grateful to the immortal soul of the man who passed on to us this noble heritage? How can we pay him adequate tribute, or do him proper honor? We can only say, as it was said of another deathless champion of his country:

> "Your nation's heart, your grave will be,
> Your monument, a nation free."

Radio address of Vice President Elpidio Quirino on the eve of Rizal Day, December 29, 1946, over Stations KZRH, KZPI and KZFM:

Fifty years ago on this very eve the forces of despotism committed one of the greatest blunders in history. Locked up in a damp dark cell of Fort Santiago, sat a lonely man, condemned to die before a firing squad the next day, an outcast of his church and his people, by decree of alien rulers. His crime? He had written books and pamphlets which portrayed the sufferings and miseries of his people. He had dared depict the unbearable despotism and arrogance of Church and State which held the people down and arrested their progress. Charged as a *filibustero*, he was also blamed for instigating rebellion that was fast gathering over the Philippine horizon.

In the age of despotism these were, indeed, serious crimes. But Rizal who was thus locked up, was wiser than his jurors, more subtle in his insight, and, therefore, more calm to await the verdict of history. He sat quietly under the flickering flame of a weak lamp, and strove feverishly to write down his last thoughts into one of the world's most immortal poems, "My Last Farewell," whose beauty, sincerity of feeling, and simplicity of expression, written as it was in the very last hour of his life before the spectre of death, not only revealed a calm, composed mind but a towering character commanding respect any where any time.

If Rizal had done nothing but write this poetic masterpiece, he still would be great. For judged by all standards, the circumstances surrounding its composition, the elevated sentiment of love,—of country, of home, of family, of peace, of valor, of dignity, of honor, of patriotism—all the finest feelings that have inspired men to worthy achievements put together in a work of magnificent beauty, Rizal's last poem must be rated among the world's best.

But Rizal did more than write an immortal poem. That was only the crowning achievement of his career as a literary man. The portrayal of his people in his two forceful novels, "Noli Me Tangere" and "El Filibusterismo," was masterly done. His people's oppressors banned these books for the truth they portrayed and not for the falsehood they allegedly contained. Nowhere has the might of the pen been most truly demonstrated over the power of the sword than in Rizal's choice use of the former against the combined might of the Church and the State in his time. And this work is now epitomized in the immortal lines of another Filipino poet who sang of Rizal's life:

Si una bala destrozó tu cráneo
Tambien tu idea destrozó un imperio!

Two years after the tragic death of Rizal on the field of Bagumbayan, the mighty Spanish empire in the Philippines toppled down. The force of evil and despotism that he depicted exploded as he had predicted, and the blind rulers who would not see the light as he wanted them to see it got the verdict they richly deserved.

His gift of a prophetic vision as a writer was unexcelled. But great as his contribution was to the building of a Filipino nationality by his writings, the force of his example was even greater. He had both the gift of ideas and the power of expression. But he never indulged in vain talk. He was quiet and reserved, but inwardly he was restless. He was feverishly active studiously searching out for solutions of the many ills and evils he saw around him. At the age of thirty-six he was a man of travel, a scientist, a linguist, a writer, a sociologist, an anthropologist, a physician, an occulist, a painter, a sculptor—withal a patriot whose brilliant and exceptional talents were devoted and dedicated largely to one thing; namely, to the good name and progress of his fatherland.

No man that I know of, living or dead, had accomplished so much to train all his powers for fruitful use than Rizal. Yet with all his personal gifts and accomplishments, he remained a humble man,—a good son, a good brother, a good friend, a patient teacher—kind to all men, dutiful, devout and God-fearing. For all his travels, studies and activities, he lived an intense life. His was not a life of easy means for he was not wealthy and had to depend on his own earnings partly for what he needed. The strange thing about him is that with all his lack of means, his expensive studies and intense intellectual and literary activities, he left an unblemished personal record. Neither wealth nor riches attracted him, nor did he take advantage of his fame and power. He lived a simple life wherever he was whether in Madrid, in Paris, or in Berlin the same as when he was as an exile in Zamboanga or in the brief moments when he could stay with his ancestral family. With all the wealth of his work and accomplishments, Rizal left no estate whatsoever. His ancestral land and home had long ago disappeared, and today there is nothing material connected with his memory and fame.

Yet there is no Filipino, living or dead, who has left so much legacy to his people than this brave martyr of Bagumbayan. While we admire his writings for their great erudition and human understanding, while we seek his inspiration for its nobility and purity, while we feel awed by the versatility of his genius, while we worship his patriotism for its firmness and great conviction, while we

adore him as a dutiful son, a brother and a friend, while we hold him as the father and idol of this land, none of this feeling to me could best interpret Rizal's life and service to his country than the lesson of his spotless, courageous life, shining above all odds and temptations to corrupt and taint it. To you who are listening to me tonight and to all Filipinos, I desire to commend this phase of Rizal's life as most worthy of our meditation in preparation of tomorrow's Rizal Day celebration.

My countrymen, even as the greatest hero produced by our race toiled unceasingly to better himself and improve the lot of his people, let us work, and work, and keep on working to bring our country back to its feet, for only by this way can we achieve progress, prosperity and happiness—the ultimate goal of this the greatest Filipino life-work and martyrdom. Only by emulating his example can we hold inviolate the cherished liberties we have won this past half century, and for which he and a host of heroes and martyrs gave up their lives so that we, who follow them and those who come after us, may justly reap the fruits of their sacrifices and our own toils.

Opening remarks by Secretary Emilio Abello on the radio program in honor of Rizal, December 29, 1946:

This is the eve of Rizal's mid-centennial anniversary as the peerless martyr to the cause of Philippine liberty. We are free today, are proud and happy, because he believed with all his soul that we as a people deserve to be so. He lived and died to give it lasting validity. We are its beneficiaries as will be our children and all subsequent generations.

Thus we all are witness to the fulfillment of his dream, which was our people's dream. We have freedom and all the responsibilities that go with it.

The fact to note on this mid-centennial anniversary of the martyrdom of our greatest hero is the hard core of character demonstrated by his sacrifice, and the faith, the courage and the progressive spirit which animated his life as it was lived for his country and people. All of these we need today as we start on our course of complete freedom to determine our own destiny.

We need character greater than ever. We must have it in our private and public life, in our business and industry, in our social and cultural endeavors. Whatever we build on anything less would be as founded on shifting sands. Rizal provided the pattern in his own life and work. We can not ask for anything better. We can not have anything better. It should be to our lasting inspiration that he was

a Filipino and therefore an authentic demonstration of the potentialities of character in every Filipino.

As in every age, climate and people, there are the faint-hearted of little vision and as little resistance when faced with stupendous problems. Rizal would rally even such. Devoting a lifetime of conscientious investigation into the roots and backgrounds of his race to measure its capacity, he arrived at this militant conclusion:

"The Filipino race, like all Malays, does not succumb before the foreigner like the Australians, the Polynesians and the Indians of the New World. In spite of the numerous wars the Filipinos have had to carry on, their number has trebled, as had that of the Malays of Java and the Moluccas. The Filipino embraces civilization and lives in every clime, in contact with every people."

Here, as someone has pointed out, was the affirmation of an invincible faith in the basic capacity of his countrymen to make the necessary adjustments under every circumstance of fortune and to rise above attendant difficulties. Here was his statement of the Filipino's title to world citizenship.

"The divine flame of thought," Rizal said in *The Philippines a Century Hence*, "is inextinguishable in the Filipino people and somehow or other, it will shine forth and compel recognition."

That is the faith that Rizal left immortal in us as a people. That is the faith that left Rizal immortal in our hearts. Rizal crystallized in his person the best of a people's genius. To every Filipino must belong the privilege to appropriate something of the hero's spirit, which we need to carry us through the multitude of problems which constitute the very opportunities of these times.

We cannot remember Rizal today without catching that spirit anew. We cannot pay him homage without gathering new faith and courage to rebuild our devastated land and leave a richer, greater heritage to our children.

Address delivered by Vice President Quirino on Parent's Day, December 2, 1946, on the occasion of the awarding of diplomas of merit and medals to the "Outstanding Mothers of 1946":

We have gathered this afternoon to do due homage to the worthy fathers and mothers of this nation. We have singled out this one day of the year to lift the ordinary reverence of every home to a national worship of the first order. We do this not because we believe the reverence of the home is in great need of being bolstered up. Neither do we do it as second thought for unpaid tributes to those who lived before us as fathers and mothers for whom as

a Christian people, we have long observed and reserved a day of prayer and religious remembrance. We do this for a great national purpose. Now more than ever this country needs good fathers, good mothers,—parents who can intelligently guide their children in our new national existence and teach them the true meaning of independence, our right outlook, our obligations and responsibilities, and the value of self-reliance, and thus properly inspire them with the natural pride and courage of self-respecting people in the spirit of true devotion to their home and country as a patriotic duty.

We have set a day for our national heroes. Their worship sets the standard of greatness which the youth should follow. The youth can only follow such a set standard to the extent as parents are willing to work and sacrifice for their offsprings in order to give them the best guidance and discipline at home and wherever they may be. That is the plain story of every man who has attained renown. His beginnings always started at home—be it a palace or a humble hut—the inspiration has always been that of his mother or father. And that is the lesson of parenthood we should all learn if Parents' Day were to have a meaning and purpose as we conceive it as a day of dedication and worship.

It is fitting that on such an occasion like this we should be presented with both the subject and object lesson. For the object lesson, we are honored today by the citation of the National Federation of Women's Clubs with the presence of the two most distinguished Filipino mothers.

The respect and affection that all men have for their parents, their families, and their homes, is born with nature. The most inexhaustible spring of literature, the world's finest poets have poured inspired and sublime thoughts to exalt it in words of lasting form and beauty. The modern state itself, with its complicated structure of rights and obligations, has evolved from the basic pattern of the family; and even religion has borrowed the imagery of parenthood to illustrate the relations between man and his Creator. But the war from whose general disaster we are only slowly and painfully emerging has emphasized anew the urgent need of formulating a philosophy of human relations fit to withstand the new demands of modern times. I have made reference to the war because, in large measure, it was a conflict between rival and irreconcilable ideologies, a conflict that has not yet been fully resolved. Especially here in the Far East, it was a clash between two antagonistic philosophies shaped and reenforced by different conceptions of the role of the family and of the home.

One of those philosophies, darkened with the cruelty and brutality of primitive man, had fossilized the ethics of the jungle. It subordinated and submerged the individual completely, enslaving him to a rigid tyranny of age and status. The wife was subject to the husband, the children were subject to the father, the widow was subject to the eldest son, and all were subject to the patriarch of the clan. The entire nation was likened to a vast and disciplined family and, like children subject to their father, every man and woman was subject to the sovereign who was the god-emperor. In this primitive pattern, the individual had no more rights or responsibilities than a minor child; he had only one duty, the duty to obey, to obey blindly, to obey without argument or compunction. The individual did not matter in the scheme of things; he had no value or worth as a human being; his sole significance and reason for existence was found in the family and in the greater family of the State.

There may have been a time in human history when these ethics were justified and even necessary. There may have been a time when the paramount need for survival of the species, for the continuity and propagation of the race, demanded and exacted the subordination of the individual to the larger unit, to the family, the clan, the tribe, or the empire. But we have seen for ourselves the horrible fruits of such a philosophy in our duty.

The modern era, however, in a violent reaction against these feudal theories of the home, has formulated a radically opposite philosophy of its own, with which we cannot be in entire agreement. This modern philosophy exalts the individual above any and all social ties or obligations; it enthrones and crowns him as an almighty tyrant, without responsibilities or obligations other than the satisfaction of his own selfish desires. The family becomes for him no more than a temporary arrangement like those of the beasts of the field or the birds in the sky. When the biological needs of the care and feeding of the young are filled, the home is deserted like a cave or a nest when the mating season has run its course.

Closely allied to this philosophy, and indeed its logical outcome in modern times, is the totalitarian doctrines which holds that if the individual has any obligations, he has them only to the State, to the dictator, the most powerful individual of them all. Marriages become experiments in eugenics conducted by State scientists. Children are bred and reared in the cold efficiency of State nurseries. Thus, we saw the Nazi dictatorship encouraging the promiscuous union between German soldiers and German girls in order to produce more cannon fodder, without benefit of mar-

riage or the inconveniences of establishing and maintaining a home. We have seen also other totalitarian systems vainly endeavoring to destroy the family by making marriage and divorce a matter of purely routine registration with the police.

The Filipino people have rejected all these evil and pernicious philosophies. Our ancient, traditional, and deep-rooted faith in the Christian doctrines cannot allow us to accept the theory of extreme individualism, just as our profound and war-tested belief in democracy cannot permit us to enslave the individual to the tyrannies of the primitive family. The family that we honor today, the home whose sanctity we are pledged to preserve, is a Filipino family in a Filipino home, with all the rights and obligations that it implies.

The Filipino family of today should be, and is, an equal partnership of mutual love, respect, and trust, where the individual man or woman is equally conscious of his personal inalienable rights and of his personal obligations to his marital partner and his children, and where the children render due obedience and respect to their parents while the parents guide their children, as long as it is necessary, along the road to full personal fulfillment and achievement.

There is a test that is usually reliable in evaluating the institution of the family, and that is the position of the wife and the mother. Where the woman is a mere chattel, the family cannot be strong and healthy. But where the wife enjoys the rights and prerogatives of an equal partner, where the mother directs the education of the children she has borne, the family is likely to be a legitimate and valuable human institution.

The Filipino family, I believe, can pass this test with conspicuous honor. Few nations in the world, if any, can compare with ours in the position of the woman in the family and in the home. The peculiarly fortunate circumstances which have given us the benefit of both Oriental and Occidental philosophies, of both Christian and secular influences, and of tradition as well as modern science and democracy, have produced a Filipino family that combines stability with freedom. The Filipina today can well boast of a position that few of her sisters of other lands enjoy, and it is most fitting that we should honor her in observing a day set apart for the Filipino family.

Thus, it is most appropriate that we should honor on this occasion the outstanding mothers of the year. It is the Filipino mother who has nourished the true traditions of our family; it is also she who has taken the boldest steps to strengthen and modernize it. I am thinking now es-

pecially, of one Filipino mother whom we would undoubtedly honor today if she were alive to receive our homage of respect and admiration. I refer to Josefa Llanes Escoda, who was in many ways the prototype and model of the modern Filipina. Surely by her fruitful life and her heroic death she has given the world a shining example of the modern women of our race. A progressive champion of the rights of her sex, an unselfish and tireless social worker and educator, she displayed fully the capacities of the Filipina in fulfilling her duties to her country and to society. You who were her colleagues in the National Federation of Women's Clubs, of which she was president in her lifetime, can testify to the energy, abnegation, and leadership with which she pursued her high objectives. But what is more significant for the Filipino family and home, is that she did not allow these numerous and exacting duties to distract her from her obligations as a wife and a mother. She was a devoted partner and helpmate of her husband, and she gave the last proof of her devotion by risking her life together with his in the extremely dangerous task of underground work and resistance against the enemy. She risked her life and she gave her life, side by side with her husband. And in giving her life for the cause of our national liberation, certainly she also gave final and uncompromising proof of her love for her children, for she died that they might enjoy the blessings of liberty and democracy. A nobler example of the modern wife and mother of our race cannot be found than this heroic fighter for the very spirit of the Filipino home.

Today she cannot receive the earthly honors which we should have wanted to bestow upon her. But we honor her in honoring her own mother, Doña Mercedes Madamba de Llanes, the worthy parent of her heroic daughter. The National Federation of Women's Clubs has set forth her achievements in its citation of her as an outstanding mother of the year. But I like to think of her as the traditional type of Filipina mother, so similar to the mothers of most of us, the modest, self-sacrificing mothers found in almost every Filipino home. She is a simple woman and yet her simplicity is her greatness. Simply she faced the challenge of life when she was widowed and left with the care of seven children, six of them daughters. Simply and with quiet courage, she gave each of them an education, supporting them single-handed until they were equipped to face life on their own. And just as simply, when the time came, she received with brave resignation the news of the fatal imprisonment of her eldest daughter.

Doña Mercedes, let me say to you here that there would be no Filipino heroes or heroines without Filipino mothers like you.

Yes, Mrs. Llanes is a typical Filipino mother. Indeed we have only to look around us to see in every street and in every barrio, mothers who fulfill in every respect our national ideal of womanhood. Of how many others might this admirable achievement be told! How many fathers and mothers in our provinces, determined to rescue their children from their own lot of ignorance or poverty, have made the most painful sacrifices, have denied themselves the most urgent necessities, have sold their work-animals and their small inherited possessions, in order to send their sons and daughters to school! I cannot think of these brave unselfish parents without feeling proud that they are Filipinos!

The story is the same throughout our history. It was the immortal Teodora Alonso who shaped the mind of the young Jose Rizal; it was she who encouraged him in his high ambitions and sent him abroad to study how he might serve his oppressed people. And it was she, the eternal Filipino mother, who dedicated heart and soul to her children, and whom Rizal afterward pictured as the unforgettable Sisa, weaving bright dreams for her sons out of her blood and tears. So powerful is the theme of motherhood throughout our national history and literature that it is a commonplace to say that our greatest men have in their own words paid the tribute that Mabini paid in dedicating his principal work to his mother. "Mother," he wrote, "wishing to place above your tomb a crown devised by my own hands, I dedicate this little book to your memory. It is poor and unworthy of you but, to this day, it is the best crown that the inexpert hands of your son have been able to fashion."

For the mothers of these heroes and patriots, the true reward, and indeed the only reward that they expected and the only reward that could content them, was the greatness of their sons. In the greatness of their sons they found their own greatness, the fulfillment of their dreams, the realization of their ambitions, the winning of their heart's desire. For this they had made their daily sacrifices, suffered their repeated privations, endured their trials and their tribulations. And they asked no other recompense than that they had not labored and suffered in vain; their sons were learned and famous and great, and they, in their obscure humility, were well content.

Of all this gallant legion of Filipino mothers, no one today can be prouder or more content than she whose son has reached the summit of fame and glory, whose son has been consecrated by popular election with the leadership of our entire people in the bright dawn of freedom. No Filipino mother can find more cause for satisfaction and

rejoicing than the mother of the President of the Philippines, Doña Rosario Acuña Roxas de Picazo.

Doña Rosario, we honor you today not only because of the eminence of your beloved son. The dignity which surrounds you is not merely the glory reflected from your son's position as the leader of our people. The honor and the dignity are yours, of your own right. They are the measure of your own achievement as a wise, devoted, and unselfish mother, as the mother whose training, guidance and inspiration lighted the spark of intelligence, high vision, daring courage, and the unfaltering qualities of leadership of the worthy first President of the Republic of the Philippines.

Ladies and gentlemen, the honor of being the living mother of the President of the Republic has been enjoyed by no other Filipina in our history. No other Filipina has lived to see such a rich fruition of her hopes and sacrifices or such a magnificent reward for her labors and privations. No other Filipina has lived to see her son receive the highest honor and trust in the power of her people to bestow, the Presidency of the Republic.

But she has carried all these honors with graceful modesty. Her unassuming figure is rarely seen in the palace halls of Malacañan. Although a room has been reserved for her there, she prefers to live in her own house, unattended by privilege and publicity. This is indeed the true Filipino mother, content that she has fulfilled her own unique mission with all the energy and devotion at her command. It was not easy to do it. The mother of seven children, she brought them up and gave every one of them an education in the face of all handicaps and difficulties. Whatever honors and distinctions she may receive now or hereafter were surely won legitimately by her motherly efforts, the efforts of a gallant and patriotic Filipina who deserves well of her country and of her people.

It is parents such as this that the Philippines needs in this decisive era. We are raising ourselves from the debris of a ruthless war to a place in the council of progressive and free peoples worthy of our new dignities and responsibilities as a sovereign nation. More than ever before in our history, we need patriots, men and women who have been taught from childhood to defend their country, to treasure freedom, and to love their fellowmen. We need clear minds, strong arms, stout hearts, and souls that are self-possessed. All this must come from the Filipino home and from there alone. It is there that future generations will learn the heroic traditions of our race, its legitimate aspirations for the future, its urgent and demanding challenges for the present. Let us hope that the

models of Filipino parenthood whom we honor today will inspire every Filipino family to be the nursery of a brave, free, progressive and prosperous Filipino people.

Fortunate is the mother who, in the momentous life of her son, lives to observe his eloquent achievements and share in his glory. Happy is the mother who, in the posthumous consecration and glorification of her daughter, can hear the encomiums and national recognition of her daughter's heroism from the very lips of gratified admirers. But more fortunate and happier still must be the son who, at the zenith of his political and patriotic career, still has a mother whom to impart his fears, his longings, his aspirations, his happiness, and a distinguished and loving mother of his children with whom he can discuss the latter's future and glory. Doña Rosario, Doña Mercedes, with your presence you have honored us. I congratulate you both. And, may I say, Mr. President, I envy you.

TREATY OF CONCILIATION

The Republic of the Philippines and the United States of America, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have decided to conclude a treaty of conciliation and for that purpose have appointed as their plenipotentiaries:

The President of the Republic of the Philippines:

His Excellency, ELPIDIO QUIRINO, Vice-President and concurrently Secretary of Foreign Affairs of the Republic of the Philippines; and

The President of the United States of America:

His Excellency PAUL V. MCNUTT, Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of the Philippines;

Who, having communicated to each other their respective full powers, found to be in good and due form, agreed as follows:

ARTICLE I

Any disputes arising between the Government of the Republic of the Philippines, and the Government of the United States of America of whatever nature they may be, shall when ordinary diplomatic proceedings have failed and the High Contracting Parties do not have recourse to adjudication by a competent tribunal, be submitted for investigation and report to

a permanent International Commission of Conciliation constituted in the manner prescribed in the next succeeding article.

ARTICLE II

The International Commission shall be composed of five members to be appointed as follows: One member shall be chosen from each country by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments, it being understood that he shall not be a citizen of either country. The expenses of the Commission shall be paid by the two Governments in equal proportions.

The International Commission shall be constituted within six months after the exchange of ratifications of this Treaty; and vacancies shall be filled according to the manner of the original agreement.

ARTICLE III

In case the High Contracting Parties shall have failed to adjust a dispute by diplomatic methods, and they do not have recourse to adjudication by a competent tribunal, they shall at once refer it to the International Commission for investigation and report. The International Commission may, however, spontaneously by unanimous agreement offer its services to that effect, and in such case it shall notify both Governments and request their coöperation in the investigation.

The High Contracting Parties agree to furnish the International Commission with all the means and facilities required for its investigation and report.

The report of the Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the High Contracting Parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each Government, and the third shall be retained by the Commission for its files.

The International Commission shall, together with its report submit its recommendations for the settlement of the matter in dispute.

Should no definite settlement be reached, notwithstanding the report and recommendations of the International Commission on the matter in dispute, the High Contracting Parties agree to submit the dispute to the jurisdiction of the International Court of Jus-

tice conformably with Article 36 of its Statute, and further agree to be bound without need of special agreement by the decision of the Court.

ARTICLE IV

The present Treaty shall be ratified by the Republic of the Philippines in accordance with its constitutional laws and by the President of the United States of America by and with the advice and consent of the Senate thereof.

The ratifications shall be exchanged at Manila as soon as possible, and the Treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith whereof the above-named plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate at Manila this 16th day of November, in the year of Our Lord, one thousand and nine hundred and forty-six and of the Independence of the Philippines the first.

For the Government of the Republic of the Philippines:

ELPIDIO QUIRINO

For the Government of the United States of America:

PAUL V. McNUTT

AIR TRANSPORT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF THE PHILIPPINES

Having in mind the resolution signed under date of December 7, 1944, at the International Civil Aviation Conference in Chicago, for the adoption of a standard form of agreement for air routes and services, and the desirability of mutually stimulating and promoting the further development of air transportation between the United States of America and the Republic of the Philippines, the two Governments parties to this arrangement agree that the establishment and development of air transport services between their respective territories shall be governed by the following provisions:

ARTICLE I

Each contracting party grants to the other contracting party the rights as specified in the Annex hereto necessary for establishing the international civil air routes and services therein described, whether such services be inau-

gurated immediately or at a latter date at the option of the contracting party to whom the rights are granted.

ARTICLE II

Each of the air services so described shall be placed in operation as soon as the contracting party to whom the rights have been granted by Article I to designate an airline or airlines for the route concerned has authorized an airline for such route, and the contracting party granting the rights shall, subject to Article VII hereof, be bound to give the appropriate operating permission to the airline or airlines concerned; provided that any airline so designated may be required to qualify before the competent aeronautical authorities of the contracting party granting the rights under the laws and regulations normally applied by these authorities before being permitted to engage in the operations contemplated by this Agreement; and provided that in areas of hostilities or of military occupation, or in areas affected thereby, such inauguration shall be subject to the approval of the competent military authorities.

ARTICLE III

Operating rights which the Philippine Government may have heretofore granted to any United States air transport enterprise shall continue in force in accordance with their terms, except for any provisions included in such operating rights which would prevent any airline designated under Article II above from operating under this Agreement.

ARTICLE IV

In order to prevent discriminatory practices and to assure equality of treatment, both contracting parties agree that:

(*a*) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control. Each of the contracting parties agrees, however, that these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(*b*) Fuel, lubricating oils and spare parts introduced into the territory of one contracting party by the other contracting party or its nationals, and intended solely for use by aircraft of such other contracting party shall, with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered, be accorded the same treatment as that applying to national airlines and to airlines of the most-favored-nation.

(*c*) The fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board civil aircraft of the airlines of one contracting party authorized to operate the routes and services described in the Annex shall, upon arriving in or leaving the territory of the other contracting party, be exempt from customs, inspection fees or similar duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

ARTICLE V

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one contracting party shall be recognized as valid by the other contracting party for the purpose of operating the routes and services described in the Annex. Each contracting party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another State.

ARTICLE VI

(*a*) The laws and regulations of one contracting party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the other contracting party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first party.

(*b*) The laws and regulations of one contracting party as to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo of the other contracting party upon entrance into or departure from, or while within the territory of the first party.

ARTICLE VII

Each contracting party reserves the right to withhold or revoke the certificate or permit of any airline of the other party in case it is not satisfied that substantial ownership and effective control of airlines of the first party are vested in nationals of that party, or in case of failure of such airline to comply with the laws of the State over which it operates, as described in Article VI hereof, or otherwise to fulfill the conditions under which the rights are granted in accordance with this Agreement and its Annexes.

ARTICLE VIII

This Agreement and all contracts connected therewith shall be registered with the Provisional International Civil Aviation Organization.

ARTICLE IX

This Agreement or any of the rights for air transport services granted thereunder may be terminated by either contracting party upon giving one year's written notice to the other contracting party.

ARTICLE X

In the event either of the contracting parties considers it desirable to modify the routes or conditions set forth in the attached Annex, it may request consultation between the competent authorities of both contracting parties, such consultation to begin within a period of sixty days from the date of the request. When these authorities mutually agree on new or revised conditions affecting the Annex, their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

ARTICLE XI

This Agreement, including the provisions of the Annex thereto, will come into force on the day it is signed.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

Done in duplicate this 16th day of November, 1946 at Manila.

For the Government of the United States of America:

PAUL V. MCNUTT
Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of the Philippines

For the Government of the Republic of the Philippines:

ELPIDIO QUIRINO
Vice President and Concurrently Secretary of Foreign Affairs of the Republic of the Philippines

ANNEX TO AIR TRANSPORT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF THE PHILIPPINES.

A. Airlines of the United States of America authorized under the present Agreement are accorded the rights of transit and non-traffic stop in Philippine territory, as well

as the right to pick up and discharge international traffic in passengers, cargo and mail at Manila, on the route or routes indicated below:

From the United States, via intermediate points to Manila and thence to points beyond in both directions.

B. Airlines of the Republic of the Philippines authorized under the present Agreement are accorded the rights of transit and non-traffic stop in United States territory, as well as the right to pick up and discharge international commercial traffic in passengers, cargo, and mail at Honolulu and San Francisco, on the route indicated below:

From the Philippines to San Francisco, and thence to points beyond, over a reasonably direct route via intermediate points in the Pacific which are United States territory, including Honolulu, in both directions.

C. In the operation of the air services authorized under this Agreement, both contracting parties agree to the following principles and objectives:

1. Fair and equal opportunity for the airlines of each contracting party to operate air services on international routes, and the creation of machinery to obviate unfair competition by unjustifiable increases of frequencies or capacity.

2. The adjustment of fifth freedom traffic with regard to:
   (*a*) Traffic requirements between the country of origin and the countries of destination.
   (*b*) The requirements of through airline operation, and
   (*c*) The traffic requirements of the area through which the airline passes after taking account of local and regional services.